

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-4033

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

HUDSON TRANSIT LINES, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE
COMMISSION and MONSEY TRANSPORTATION CORP.,

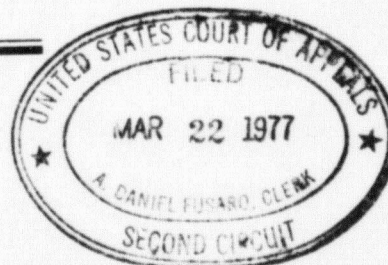
Respondents.

ON PETITION FOR REVIEW OF ORDER OF THE INTERSTATE
COMMERCE COMMISSION

APPENDIX

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249 Press of Fremont Payne, Inc., 417 Canal St., N. Y.—966—6570



PAGINATION AS IN ORIGINAL COPY

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III.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of:
Hudson Transit Lines, Inc.

Case No. 77-4033

7/3/75	Application
4/20/76	Transcript of Testimony and Accompanying Exhibits
5/10/76	Initial Decision
6/8/76	Stay Order of Review Board No. 2
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8/11/76	Reply by Monsey Transportation Corp.
8/23/76	Petition for Reconsideration by Hudson Transit Lines, Inc.
9/20/76	Petition for Leave to Intervene by National Bus Traffic Association
9/20/76	Petition for Reconsideration by National Bus Traffic Association
9/28/76	Reply by Monsey Transportation Corp.
12/13/76	Order of Interstate Commerce Commission, Division I, Acting as an Appellate Division
1/4/77	Petition for Reconsideration of National Bus Traffic Association
1/4/77	Petition for Findings of General Transportation Importance of Hudson Transit Lines, Inc.
1/13/77	Reply of Monsey Transportation Corp.
1/17/77	Order of the Interstate Commerce Commission
2/9/77	Order of the Interstate Commerce Commission, Division I, Acting as an Appellate Division

ORDER OF COMMISSION OF FEBRUARY 9, 1977

T SERVICE DATE T

FEB 16 1977

ORDER

At a Session of the **INTERSTATE COMMERCE COMMISSION, Division 1,**
Acting as an Appellate Division, held at its office in
Washington, D. C., on the 9th day of February, 1977.

No. MC-141113

MONSEY TRANSPORTATION CORP., CONTRACT CARRIER APPLICATION
(Spring Valley, N. Y.)

Upon consideration of the record in the above-entitled
proceeding, and of;

- (1) Petition of the National Bus Traffic Association,
filed January 4, 1977, for reconsideration of the
prior order of Division 1, entered December 13,
1976, denying the request for leave to intervene;
- (2) Reply of applicant, filed January 17, 1977;

and good cause appearing therefor:

It is ordered, That said petition be, and it is hereby,
denied for the reason that said order of Division 1 was
entered in accordance with the applicable law after it
appeared that no sufficient or proper cause appeared for
permitting petitioner to participate in this proceeding, and
no sufficient or proper cause otherwise exists for permitting
intervention at this time.

It is further ordered, That this order shall be effective
on the date of service hereof.

By the Commission, Division 1, Acting as an Appellate
Division, Commissioners Murphy, Gresham, and MacFarland.

(SEAL)

ROBERT L. OSWALD,
Secretary.

ORDER OF COMMISSION DATED JANUARY 17, 1977

SERVICE DATE

ORDER

JAN 21 1977

At a General Session of the INTERSTATE COMMERCE COMMISSION,
held at its office in Washington, D. C., in the 17th
day of January, 1977.

No. MC-141113

MONSEY TRANSPORTATION CORP. CONTRACT CARRIER APPLICATION
(Spring Valley, N. Y.)

Upon consideration of the record in the above-entitled
proceeding and of petition of Hudson Transit Lines, Inc.,
protestant, filed January 6, 1977, for a determination and
announcement that the proceeding involves an issue of
general transportation importance; and good cause appearing
therefor:

It is ordered, That the said petition be, and it is
hereby, denied, for the reason that in the judgment of the
Commission no issue of general transportation importance is
involved.

By the Commission.

(SEAL)

ROBERT L. OSWALD,
Secretary.

ORDER OF COMMISSION DATED DECEMBER 13, 1976

SERVICE DATE

ORDER

DEC 27 1976

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1,
Acting as an Appellate Division, held at its office in
Washington, D. C., on the 13th day of December, 1976.

ROBERT TRANSPORTATION CORP. CONTRACT CARRIER APPLICATION
(Spring Valley, N. Y.)

Upon consideration of the record in the above-entitled proceeding, and of:

- (1) Petition of Rockland Coaches, Inc., protestant, filed July 30, 1976, for reconsideration;
- (2) Reply by applicant, filed August 13, 1976, to (1) above;
- (3) Petition of Hudson Transit Lines, Inc., protestant, filed August 25, 1976;
- (4) Reply by applicant, filed August 30, 1976, to (3) above;
- (5) Petition of the National Bus Traffic Association, filed September 20, 1976, for leave to intervene and to file a tendered petition for reconsideration or further hearing;
- (6) Tendered petition of the National Bus Traffic Association, submitted for filing September 20, 1976, for reconsideration or further hearing;
- (7) Reply by applicant, filed October 1, 1976, to (5) and (6) above; and good cause appearing therefor:

It is ordered, That the petition and tendered petition in (5) and (6) above be, and they are hereby, denied and rejected, respectively, for the reason that petitioner has not shown good cause for being permitted to intervene at this stage of the proceeding.

It is further ordered, That the petitions in (1) and (3) above be, and they are hereby, denied, for the reason that the findings of Review Board Number 2 are in accordance with the evidence and the applicable law.

It is further ordered, That unless compliance is made by applicant with the requirements of Sections 215, 217, and 221(c) of the Interstate Commerce Act, within 90 days after the date of service of this order, or within such additional time as may be authorized by the Commission, the grant of authority shall be considered as null and void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

It is further ordered, That this order shall be effective 15 days from the date of service hereof.

By the Commission, Division 1, Acting as an Appellate Division, Commissioners Murphy, Gresham, and MacFarland, Commissioner MacFarland dissenting.

(SEAL)

ROBERT L. OSWALD,
Secretary.

ORDER OF COMMISSION DATED DECEMBER 13, 1976

NOTICE: By this order, this proceeding is rendered administratively final within the meaning of 49 CFR 1101.2(f) of the Commission's regulations; and, in accordance with the provisions of Section 558(c) of the Administrative Procedure Act, any corresponding temporary authority expires and operation thereunder must cease upon the effective date of this order, except that to the extent permanent authority is granted in this proceeding (and if partial, only to that extent) the corresponding temporary authority or portion thereof will continue in effect until a certificate or permit is issued and becomes effective. The filing of any further pleadings in this matter will not stay the expiration of the temporary authority related to the denied portion of the sought permanent authority.

ORDER OF REVIEW BOARD NO. 2 dated
June 22, 1976

SERVICE DATE

STAY DECISION AND ORDER

JUL 20 1976

At a Session of the INTERSTATE COMMERCE COMMISSION, Review Board Number 2, held at its office in Washington, D. C., on the 22nd day of June, 1976.

No. MC-141113

MONSEY TRANSPORTATION CORP. CONTRACT CARRIER APPLICATION
(Spring Valley, N.Y.)

Upon consideration of the application, as amended, and the record in the above-entitled proceeding, including the initial decision of the Administrative Law Judge; and

It appearing, That no exceptions were filed to the initial decision of the Administrative Law Judge, but that the taking effect of said decision was stayed by order of the Commission dated June 8, 1976, and served June 25, 1976;

It further appearing, That the Administrative Law Judge recommended that applicant be granted a permit authorizing the operation as described in the appendix to this order;

It further appearing, That although the proposed operation concerns the transportation of passengers between points in a single State (New York), the record indicates that applicant proposes to operate over the most feasible route between Monsey, N.Y., and New York, N.Y., which route encompasses portions of New Jersey; and that, therefore, the operation is in interstate commerce and is properly the subject of this application proceeding;

It further appearing, That the Administrative Law Judge's recommended grant of motor contract carrier authority to transport passengers between a described area in New York under a continuing contract or contracts with an unlimited number of unnamed "Jewish orthodox congregations or yeshivas" located in the named origin territory should be modified; that testimony adduced at hearing indicated that there exist more than 32 of the described congregations in the Monsey, N.Y., area as well as an undetermined number of yeshivas or religious schools; that if applicant were to enter into contracts for transportation services with each of these organizations and performed operations thereunder, it could not be considered as engaging in transportation for a "limited number of persons" as specified in the contract carrier definition of section 203(a)(15) of the Interstate Commerce Act; that the operations proposed by applicant and shown to be required by the supporting witnesses may be described more appropriately in terms of motor common carrier special and charter operations; that the record amply shows the latter service to be required by the public convenience and necessity; and that said authority will be granted in lieu of the contract carriage recommended by the Administrative Law Judge;

It further appearing, That the territorial description used by the Administrative Law Judge in his recommended grant of authority is extremely narrow; that the said territorial description is also administratively unfeasible, unduly restrictive, and difficult to enforce; and that the description in question will therefore be modified as indicated in the appendix;

ORDER OF REVIEW BOARD NO. 2 DATED JUNE 22, 1976

No. MC-141113

It is further ordered, That upon compliance by applicant with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act and with the Commission's rules and regulations thereunder, within the time specified in the next succeeding paragraph, an appropriate certificate be issued, subject to prior publication in the Federal Register of a notice of the authority actually granted by this decision and order.

And it is further ordered, That unless compliance is made by applicant with the requirements of sections 215, 217, and 221(c) of the Act within 90 days after the date of service hereof, or within such additional time as may be authorized by the Commission, the grant of authority made herein shall be considered as null and void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman. (Board Member Boyle not participating.)

ROBERT L. OSWALD,
Secretary.

(SEAL)

APPENDIX

SERVICE RECOMMENDED:

Operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of passengers and their baggage in the same vehicle with passengers, between that area in Monsey, N.Y., bounded on the north by Viola Road, on the east by State Highway 306 from Viola Road to Kearsing Parkway to the western boundary of the village of Spring Valley, on the south by State Highway 59, and on the west by College Road, on the one hand, and, on the other, (1) 46th to 47th Streets and 6th Avenue, Manhattan, N.Y.; (2) 34th Street and 5th Avenue, Manhattan, N.Y.; (3) Broadway and Houston Street, Manhattan, N.Y.; (4) Lee Avenue and Rodney Street, Brooklyn, N.Y.; and (5) 49th Street and 13th Avenue, Brooklyn, N.Y., under continuing contracts with Jewish Orthodox congregations and yeshivas located in the described Monsey area, with transportation restricted to members of said congregations and yeshivas.

SERVICE AUTHORIZED:

Operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of passengers and their baggage in the same vehicle with passengers, in special and charter operations, beginning and ending at Monsey, N.Y., and extending to points in New York and Kings Counties, N.Y.

STAY ORDER OF REVIEW BOARD NO. 2 of JUNE 8, 1976

SERVICE DATE

JUN 25 1976

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Review Board No. 2, held at this office in Washington, D. C., on the 8th day of June, 1976.

No. MC 141113

MONSEY TRANSPORTATION CORP.
(Spring Valley, N. Y.)

STAYING EFFECTIVE DATE OF RECOMMENDED ORDER

It appearing, That the above-entitled matter has been referred to Administrative Law Judge J. Lee Benice, for hearing and recommendation of an appropriate order thereon; that said hearing has been had; that a recommended order, accompanied by a report containing the reasons therefor, was filed and served on May 10, 1976 as provided in the Interstate Commerce Act;

It is ordered, That the taking effect of the said recommended order in the above-entitled matter be, and it is hereby, stayed pending the further order of the Commission.

By the Commission, Review Board No. 2.

ROBERT L. OSWALD,
Secretary.

(SEAL)

DECISION OF ADMINISTRATIVE LAW JUDGE OF APRIL 30, 1976

OH

INTERSTATE COMMERCE COMMISSION

INITIAL DECISION

SERVICE DATE ,

MAY 10 1976

No. MC-141113

MONSEY TRANSPORTATION CORP., CONTRACT CARRIER APPLICATION

Authority granted to applicant as a contract carrier of passengers
between New York, N. Y., and Monsey, N. Y., subject to conditions.

Harvey L. Strelzin, for applicant.
S. S. Eisen, Frank J. Fitzsimmons, and Samuel B. Zinder, for protestants.

By J. Lee Benice, Administrative Law Judge:

By application filed July 3, 1975, as amended, Monsey Transportation Corp., of Spring Valley, N. Y., seeks authority (as described more precisely in the findings below) as a contract carrier of passengers, over irregular routes, between the unincorporated community of Monsey, N. Y., on the one hand, and certain specific locations in New York City, on the other.

A public hearing has been held at which three common carrier protestants (Hudson Transit Lines, Inc., Rockland Coaches, Inc., and Transport of New Jersey) initially appeared in opposition. However, all subsequently withdrew from the hearing.

STATEMENT OF FACTS

The evidence shows that applicant will provide a unique and highly specialized service designed to meet the peculiar transportation needs of the Orthodox Jewish Community residing in the unincorporated hamlet of Monsey. These people constitute nearly the entire population of Monsey, and they absolutely require a bus service to and from their places of employment in New York City that will be consistent with their own distinctive religious beliefs and customs (such as, for example, the fact that the sexes insist upon being segregated on the bus, and the fact that all passengers must be returned to their homes before sundown on Friday and will not ride on Friday evening or Saturday), practices which are so incompatible with common carriage and with the normal bus operations of existing carriers that such carriers have declined to provide such a service, forcing hundreds of inhabitants of Monsey to resort to extraordinary measures to get to and from work.

DECISION OF ADMINISTRATIVE LAW JUDGE OF APRIL 30, 1976

No. MC-141113

The evidence further shows that the proposed operation would be almost perfectly balanced and would be economically feasible; that applicant is fit, willing, able, and uniquely qualified to provide such a service; that existing carriers would be unaffected by a grant of authority; that a denial would be harmful to the prospective passengers and would result in substitute methods of transportation that are less efficient and more wasteful of fuel.

DISCUSSION AND CONCLUSIONS

It is clear from the evidence that the application, as amended, should be granted in order to provide a much needed service, and that the manner in which the authority is described in the amended application and in the findings below will provide the greatest flexibility of service while retaining the essential character of contract carriage. The specific contracting organizations are not named. It would not be feasible, and, indeed, would be onerously burdensome to require that specific contracting organizations be named in the permit, since very small groups (as small as 10 persons) are continually being formed, or merged, and the cost of obtaining new authority to accommodate each new small group, as it formed, would be prohibitive. It should also be noted that the total number of contracting organizations could reach a substantial figure and thereby suggest to some (aware of the decision in Umthum Trucking Co. Ext. - Phosphatic Feed Supplements, 91 M.C.C. 691) that the operation had lost its character as a contract carriage operation. However, it is apparent from a close examination of the Umthum case (see Umthum, *supra*, at 696 and 697) and from a close examination of both the authority that will be granted and the nature of the operation that is to be conducted, that as long as the limitations in the permit are observed, the operation will necessarily retain the character of contract carriage and will be wholly irreconcilable with common carriage.

The authority to be granted will result in a slight technical enlargement in the authority originally applied for. Accordingly, notice of the grant of authority will be published in the Federal Register in order to apprise parties who theoretically might be affected by any enlargement of the application.

FINDINGS AND ORDER

I find that operation by applicant as a contract carrier of passengers by motor vehicle in interstate and foreign commerce, over irregular routes, transporting passengers and their baggage in the same vehicle with passengers, between that area in Monsey, N. Y., bounded on the north by Viola Road, on the east by State Highway 306 from Viola Road to Kearsing Parkway to the western boundary of the village of Spring Valley, on the south by State Highway 59, and on the west by College Road, on the one hand, and, on the other, (1) 46th to 47th Streets and 6th Avenue, Manhattan, N. Y.; (2) 34th

DECISION OF ADMINISTRATIVE LAW JUDGE OF APRIL 30, 1976

No. MC-141113

Street and 5th Avenue, Manhattan, N. Y.; (3) Broadway and Houston Street, Manhattan, N. Y.; (4) Lee Avenue and Rodney Street, Brooklyn, N. Y.; and (5) 49th Street and 13th Avenue, Brooklyn, N. Y.; under continuing contracts with Jewish orthodox congregations and yeshivas located in the described Monsey area; with transportation restricted to members of said congregations and yeshivas; will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able to provide the proposed service and conform to the requirements of the Interstate Commerce Act and the Commission's Rules and Regulations thereunder; that this proceeding is not a major Federal action having a significant effect upon the human environment; that an appropriate permit should be issued; and that the application in all other respects should be denied. Accordingly,

It is ORDERED, that the application, except to the extent granted herein, be, and it is hereby, denied;

It is FURTHER ORDERED, that upon compliance by applicant with the requirements of sections 215, 218, and 221(c) of the Interstate Commerce Act, and with the Commission's Rules and Regulations thereunder, and with the requirements established in Contracts of Contract Carriers, 1 M.C.C. 628, and subject to 30 days' prior publication in the Federal Register of a notice of the authority actually granted by this order, during which 30-day period any person prejudiced by lack of earlier notice may seek to intervene in this proceeding, a permit will be issued authorizing the operations described above;

And it is FURTHER ORDERED, that unless compliance is made by applicant with the requirements of sections 215, 218, and 221(c) of the act within 90 days after the date of the Federal Register publication described in the preceding paragraph, or within such additional time as may be authorized by the Commission, the grant of authority made herein shall be considered as null and void and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

Dated at Washington, D.C., this 30th day of April, 1976.

By the Commission, J. Lee Benice, Administrative Law Judge.

ROBERT L. OSWALD,

(SEAL)

Secretary.

APPLICATION

Form OP-00-9 (Rev. 8/73)
Page 1 of 9

OMB 60-R0296

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 189A095

No. MC- _____
(For Office Use Only)

Date JUL 8 1975

Fee \$ 350.00

APPLICATION FOR MOTOR CARRIER CERTIFICATE OR PERMIT
(Read instructions on page 6 before answering)

ICC Washington, D. C.

(a) Application of MONSEY TRANSPORTATION CORP., a New York corporation,
whose directors and officers (Name and Trade Name, if any) are: Chaim Lunger and
Feige Lunger, both of 94 Washington Ave., New Square, Spring Valley,
New York 10977

(State whether an individual, partnership, corporation, association, fiduciary, or other legal entity. If a partnership, give name of all partners. If a corporation, give name of State in which incorporated, and the names and addresses of all directors and officers.)

whose business address is: 94 Washington Avenue, New Square,
(Street)Spring Valley
(City)New York 10977
(State and Zip Code)(b) Applicant's representative to whom inquiries respecting this application may be made
is: Harvey L. Strelzin
(Name)253 Broadway

(Street Address)

New York

(City)

New York 10007

(State and Zip Code)

II. Will granting the authority sought in this application constitute a major Federal action having a significant effect upon the quality of the human environment?
JUL - 3 1975Yes ☐ No ☒

JUL 3 1975

If yes, a statement complying with the requirements of 49 CFR 1100.250 as promulgated in
Implementation-Natl. Environmental Policy Act, 1969, 340 I.C.C. App. must be attached to this application.III. (a) Applicant hereby applies for authority to engage in operation, in interstate or foreign
commerce, as a contract carrier by motor vehicle, over
(Common or Contract)regular routes, in the transportation of passengers
(Regular or Irregular)in special or charter operations with Chassidic Jews and religious
groups, organizations, congregations and synagogues of the Chassidic
Jewish Sect. Hand baggage of passengers will be transported in same
vehicle with passengers.(If general commodities, so state, and name exceptions, if any. If specific commodities or classes of
commodities, name them. Any limitation on service to be provided should be identified. For example,
if applicant does not seek authority to transport commodities in bulk, in tank vehicles, the application should
so state. If passengers, so state and indicate if it is desired to transport express, newspapers, or baggage
of passengers in the same vehicle with passengers; and specify if special or charter operations, or both,
(proposed.)

APPLICATION

(b) Applicant requests authority to operate from, to, or between the following points or described areas: New York City (Boroughs of Brooklyn and Manhattan) and Township of Monsey, Rockland County, State of New York, on regular routes. Also see VII(a) and route descriptions hereto annexed as Ex. 1 thru 4.

(If regular-route authority is sought, describe the highways or segments thereof, in sequence, to be used and the intermediate or off-route points to be served. Intermediate points apply only to regular-route operations; off-route points apply only to regular-route carriers of property. If seasonal operations are proposed, specify the period in which such operations will be conducted. In defining the geographical scope of authority sought in an application, the term "United States" shall be construed as including the District of Columbia, and as excluding Alaska and Hawaii. Applications seeking to encompass authority to, from, or between points in Alaska or Hawaii shall specifically so state.

IV. Indicate whether applicant in prosecuting this application will present evidence of witnesses who will testify, in support of the application, as to their need for the service proposed.

Yes ☒. No ☐.

(a) If the answer is YES, applicant must attach to this application one or more certifications of support which shall be prepared in the form prescribed in the appendix to the instructions accompanying this application form. The certification must be signed by the individual, or by an authorized representative of the corporation, association, or partnership, upon whose support applicant intends to rely. If 10 or less than 10 witnesses will appear, certifications from each witness must be submitted. If more than 10 witnesses will appear in support of the application, applicant must submit with the application additional certifications of support in sufficient number to be reasonably representative of the total number of witnesses to be presented and the scope of the authority applied for.

Except for good cause shown, no application depending upon the supporting evidence of public witnesses will be accepted for filing unless it is accompanied by the certifications of support of such witnesses. The submission with the application of such statements will not prevent applicant from presenting evidence of additional witnesses at a later stage of the proceeding. The certifications of support are not intended for use as supporting evidence should the application be assigned for handling without an oral hearing.

(b) If the answer above is NO, explain why and describe briefly the type of evidence which will be relied upon by applicant to support its burden of proof: _____

V. (a) If applicant now holds, or has an application pending for, authority from the Interstate Commerce Commission as a motor common or contract carrier, a water common or contract carrier, a transportation broker, or a freight forwarder, identify the lead docket number assigned to such authority or application: _____

Not applicable

(b) If applicant has within two years of the date of this application applied for authority duplicating in whole or in part that sought in this application, identify the docket number and indicate either the disposition or the current status of the prior application: _____

Not applicable

(Applicant should understand that applications seeking authority which duplicates in whole or in part that sought in any such pending proceeding either may be rejected or processing thereof may be withheld until final disposition of the pending proceeding.)

APPLICATION

Form OP-OR-9
Page 3 of 9

(c) If applicant holds motor carrier temporary authority corresponding in whole or in part to the permanent authority sought in this application, identify the docket number assigned thereto:

No. MC- Not applicable issued _____
expiration date _____.

(d) If applicant seeks authority as a motor contract carrier, list (1) the person or persons for whom its service now is being performed under effective contracts pursuant to any existing permits:

Not applicable

and (2) the person or persons it would serve in the proposed operation: _____

See Item III

(e) If applicant seeks approval of dual operations under section 210 of the act to enable applicant and any motor carrier affiliated with applicant to conduct property operations both as a common and contract carrier by motor vehicle, specify the scope and extent of the dual operations involved: _____

Not applicable

VI. (a) Indicate any interest, whether stock, loans, voting or management arrangements, which the applicant or any officer or director thereof, has in the affairs of other carriers: _____

NONE

(b) Indicate any interest, whether stock, loans, voting or management arrangements, which any other carrier, including officers and directors thereof, or any person authorized to control a carrier, has in the affairs of applicant: _____

NONE

(c) Does the applicant know of any person who has an interest, whether stock, money, voting or management arrangements, in the applicant who also holds an interest, whether stock, money, voting or management arrangements, in another carrier? Yes ☐. No ☒.

If the answer above is YES describe the interest which such person has in applicant and in the other carrier: _____

VII. (a) Applicant must submit with the application a map of the proposed operation showing also all pertinent portions of applicant's present authority.

APPLICATION

Form OP-OR-9
Page 4 of 9

(b) If irregular-route authority is sought, indicate whether the authority here sought can be joined with any operating authority applicant now holds, or seeks in a pending application, so as to permit the performance of a through service by applicant to, from, or between points not included in this application. Yes ☐. No ☐. If the answer is YES, indicate the points or areas where the physical operation could connect and the territory that would be served through such joinder: _____

NOT APPLICABLE

(Attach pertinent portions of authority now held or sought in pending applications.)

(c) Show the extent to which applicant or any carrier affiliated with applicant holds authority duplicating in any respect that sought herein, or to which any application previously filed with the Commission and still pending, or any application being filed simultaneously with this one, seeks authority duplicating that sought in this application: _____

NOT APPLICABLE

VIII. (a) If the application is assigned for oral hearing, state where applicant prefers that the hearing be held, and alternate choices: New York City

(The listing of alternate choices may result in a more prompt scheduling of the hearing.)

(b) State the approximate number of witnesses applicant will present at the hearing: less than 10
and the approximate time their direct examination will require: 2 hours

IX. If the evidence presented in support of this application shows that applicant, although applying for a certificate as a common carrier, would be entitled to a permit as a contract carrier, or, if applying for a permit, would be entitled to a certificate, applicant agrees that the application may be considered to be for the appropriate form of authority.

X. Applicant understands that the filing of this application does not, in itself, constitute authority to operate.

OATH

COUNTY OF NEW YORK)
STATE OF NEW YORK) ss:

CHAIM LUNGER, being duly sworn,
(Name of Affiant)

states that he files this application as (indicate relationship to applicant, that is, owner or proprietor, title as officer of applicant corporation or association, member of applicant partnership, or other authorized representative of applicant) President and Director of

Monsey Transportation Corp.;

that, in such capacity, he is qualified and authorized to file and verify such application and to certify with respect to the availability of shipper and public witnesses to present evidence in support thereof; that he has carefully examined all the statements and matters contained in the application; and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief. Affiant further states that the application is made in good faith, with the intention of presenting evidence in support thereof in every particular.

APPLICATION

Form OP-OR-9
Page 5 of 9

Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable by up to five years imprisonment and fines up to \$10,000 for each offense. (See 18 U.S.C. 1001.)

Chaim Lungen
(Signature of Affiant)

Subscribed and sworn to before me, a Notary Public in and for the
State and County above named, this 2 day of June 19 75

(SEAL)

My Commission expires _____

Rachel B. Backer
Notary Public, State of New York
No. 31-0125025
Qualified in New York County
Term Expires March 30, 1977

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has delivered a copy of this application, in person or by mail, to the following Regional Director of the Commission's Bureau of Operations for the Region in which the applicant has its headquarters:

Name of Regional Director

Address

Howard S. Thayer

150 Causeway, 5th Floor
Boston, Mass. 02114

The undersigned further certifies that he has delivered a copy of this application, in person or by mail, to the appropriate State Board (or official) in each of the following States in or through which the operations described in this application would be performed:

Name of State Board

Public Utility Commission

Trenton, New Jersey

Dept. of Transportation

Albany, New York

Dated this 1st day of July 19 75

Rachel B. Backer
(Signature)

APPLICATION

A. From New York City (Borough of Brooklyn) to Monsey, New York :

Board passengers at 49th Street and 15th Avenue, then beginning from that point, along 49th Street into Fort Hamilton Parkway, along Fort Hamilton Parkway into MacDonald Avenue, along MacDonald Avenue into Terrace Place, along Terrace Place to 18th Street, along 18th Street into Prospect Expressway, along Prospect Expressway into Gowanus Expressway, along Gowanus Expressway into Brooklyn-Queens Expressway, along Brooklyn-Queens Expressway to Flushing Avenue exit and into Classon Avenue, along Classon Avenue into Kent Avenue, along Kent Avenue into Williamsburg Street East, along Williamsburg Street East into Bedford Avenue, along Bedford Avenue into Taylor Street, along Taylor Street into Lee Avenue, along Lee Avenue to Wilson Street, board passengers at that point, then continue along Lee Avenue into Rodney Street, along Rodney Street into Bedford Avenue, along Bedford Avenue into Taylor Street along Taylor Street into Roebling Street, along Roebling Street into Division Avenue, along Division Avenue into Havemeyer Street along Havemeyer Street into So. 4th Street, along So. 4th Street onto Williamsburg Bridge, across bridge to exit from bridge leading into Delancey Street, along Delancey Street to Allen Street, board passengers at that point. then proceed along Allen Street which becomes First Avenue, continue along First Avenue into 49th Street, ~~along First Avenue into 49th Street~~, along 49th Street to Fifth Avenue, board passengers at that point, then

APPLICATION

continue along 49th Street into Ninth Avenue, along Ninth Avenue into Lincoln Tunnel, through Tunnel into New Jersey Turnpike, along Turnpike into Rte. 80, along Rte. 80 into Rte. 17, along Rte. 17 into Garden State Parkway, along Parkway into New York State Thruway, along Thruway to Nanuet exit and into Pascack Road, along Pascack Road into *Pipe Town Hill Road*, along *Pipe Town Hill Road* into Central Avenue, along Central Avenue into Rte. 59, along Rte. 59 into Monsey Boulevard, along Monsey Boulevard to Maple Avenue, discharge passengers at that point, then continue along Maple Avenue to Main Street, discharge passengers at that point, then continue along Maple Avenue (which becomes West Maple Avenue) to Carlton Road, discharge passengers at that point, then proceed along Carlton Road to Blauvelt Road, discharge passengers at that point, then proceed along Blauvelt Road to Cedar Lane and discharge all passengers at that point, being the terminus of the route.

APPLICATION

B. From Monsey, New York to New York City (Borough of Brooklyn) :

Board passengers at Cedar Lane and Rte. 306, then beginning from that point, along Cedar Lane into Blauvelt Road, along Blauvelt Road to Carlton Road, board passengers at that point, then proceed along Carlton Road to West Maple Avenue, board passengers at that point. then proceed along West Maple Avenue to Highview Road, board passengers at that point, then proceed along Maple Avenue to Main Street, board passengers at that point, then continue along Maple Avenue to Monsey Boulevard, board passengers at that point, then proceed along Monsey Boulevard into *Pipe Town Hill Road*, along *Pipe Town Hill Road* onto Rte. 59, along Rte. 59 into New York State Thruway, along Thruway into Garden State Parkway, along Parkway to Exit 163 and into Rte. 17, along Rte. 17 into Rte. 80, along Rte 80 into New Jersey Turnpike, along Turnpike into Lincoln Tunnel, through Tunnel to exit leading into Tenth Avenue, along Tenth Avenue into 50th Street, along 50th Street to Sixth Avenue, discharge passengers at that point, then proceed along 50th Street to Lexington Avenue, discharge passengers at that point, then proceed along Lexington Avenue to 41st Street, discharge passengers at that point, then continue along Lexington Avenue to 29th Street, discharge passengers at that point, then proceed along 29th Street to Broadway, discharge passengers at that point, then proceed along Broadway to Houston Street, discharge passengers at that point, then proceed along Houston Street

APPLICATION

passengers at that point, then proceed along Delancey Street onto Williamsburg Bridge, across Bridge to exit leading into Roebling Street, along Roebling Street into Division Avenue, along Division Avenue into Wilson Street, along Wilson Street to Lee Avenue, discharge passengers at that point, then proceed along Lee Avenue into Williamsburg Street West, along Williamsburg Street West onto Brooklyn-Queens Expressway, along Expressway into Gowanus Expressway, along Gowanus Expressway into Prospect Expressway, along Prospect Expressway into Tenth Avenue, along Tenth Avenue to MacDonald Avenue, along MacDonald Avenue into Fort Hamilton Parkway, along Fort Hamilton Parkway into 50th Street, along 50th Street to 15th Avenue and discharge all passengers at that point, being the terminus of the route.

APPLICATION

C- From New York City (Borough of Manhattan) to Monsey, New York :

Board passengers at 187th Street and Amsterdam Avenue, then beginning from that point, along Amsterdam Avenue to George Washington Bridge, across that bridge into Rte. 4, then along Rte. 4 into Rte. 17, then along Rte 17 into Garden State Parkway, then along that parkway to Exit 172 into ~~Tipton Hill Road~~ *Pipetown Hill Road* and along *Pipetown Hill Road* into Rte 45, then along Rte. 45 onto Old Nyack Turnpike, and along Old Nyack Turnpike to Kennedy Drive, discharge passengers at that point, then proceed along Kennedy Drive onto Rte. 59, along Rte. 59 into Monsey Boulevard, along Monsey Boulevard to Maple Avenue, discharge passengers at that point, then proceed along Maple Avenue (which becomes West Maple Avenue) into Boxwood Lane, along Boxwood Lane to Remsen Avenue, discharge passengers at that point, then proceed along Remsen Avenue into Barbara Lane, along Barbara Lane to College Road, board passengers at that point and proceed along College Road into Highview Avenue, along Highview Avenue into Windover Lane, along Windover Lane to Carlton Road, board passengers at that point, then proceed along Carlton Road into Blauvelt Road, along Blauvelt Road into Cedar Lane, along Cedar Lane to corner of Cedar Lane and Blauvelt Road and discharge all passengers at that point, being the terminus of the route.

APPLICATION

D. From Monsey, New York to New York City (Borough of Manhattan) :

Board passengers at corner of Cedar Lane and Blauvelt Road, then beginning from that point, along Blauvelt Road into Carlton Road, along Carlton Road to Windover Lane, board passengers at that point, then proceed along Windover Lane into Highview Road, along Highview Road to College Road, board passengers at that point, then proceed along College Road to Barbara Lane, board passengers at that point, then proceed along Barbara Lane to Remsen Avenue, board passengers at that point, then proceed along Remsen Avenue into Mountain Avenue, along Mountain Avenue to Maple Avenue, board passengers at that point, then proceed along Maple Avenue into Monsey Boulevard, along Monsey Boulevard into Rte. 59, along Rte. 59 into Kennedy Drive, along Kennedy Drive to Old Nyack Turnpike, board passengers at that point, then proceed along Old Nyack Turnpike into Rte. 45, along Rte. 45 into Garden State Parkway, along Garden State Parkway to Exit 163 and into Rte. 17, along Rte. 17 into Rte. 4, along Rte. 4 onto George Washington Bridge, across bridge to exit from bridge leading into Amsterdam Avenue, along Amsterdam Avenue to 187th Street and discharge passengers at that point, being the terminus of the route.

PETITION OF ROCKLAND COACHES, INC. of July 29, 1976
FOR RECONSIDERATION

Before the
INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-141113

MONSEY TRANSPORTATION CORP.,
CONTRACT CARRIER APPLICATION

PETITION FOR RECONSIDERATION
AND MODIFICATION OF THE
DECISION OF REVIEW BOARD
NUMBER 2

Comes now Rockland Coaches, Inc., (Rockland)
authorized by Certificate of Public Convenience and Necessity
in Docket No. MC-29890 and sub numbers thereto, to conduct
passenger service, a protestant in the proceeding captioned
as above, and respectfully requests reconsideration and
modification of the decision and order of Review Board Number
2 to the extent and in the particulars hereinafter set forth.

PETITION FOR RECONSIDERATION BY ROCKLAND COACHES, INC.
JULY 29, 1976

As the result of a stipulation among the parties, with the acquiescence of the presiding Administrative Law Judge, the application was amended as set forth in Initial Decision of Administrative Law Judge J. Lee Benice. As a result thereof, Rockland Coaches and other protestants withdrew from the hearing. No exceptions were taken to the Initial Decision. However, the Initial Decision was stayed. Review Board Number 2 now improperly and without justification unduly enlarges the scope of the authority to be granted herein. It is to that enlargement that this Petition is directed.

The Administrative Law Judge found that the specific services required by the supporting residents and riders are:

"incompatible with common carriage
and with the normal bus operations of
existing carriers."

He thereupon undertook to devise a grant that would satisfy the needs of the involved public but still retain the needed service characteristics that would make the new service "wholly irreconcilable with common carriage". His efforts in this regard resulted in the withdrawal from the hearing of the common carrier protestants. Review Board Number 2, however, would revise the grant to authorize operations:

PETITION FOR RECONSIDERATION BY ROCKLAND COACHES, INC.
JULY 29, 1976

"of passengers and their baggage
in the same vehicle with passengers,
in special and charter operations,
beginning and ending at Monsey, N.Y.,
and extending to points in New York
and Kings Counties, N.Y."

THE GRANT OF SPECIAL AND CHARTER OPERATIONS

The record clearly shows that the riders here involved are interested in obtaining regular, repetitive transportation between their residences in the township of Monsey and their places of business in Manhattan and Brooklyn. Each rider intends to and will pay for his own individual transportation on an individual ride basis. No other plan is intended, nor is any other method feasible. There will be no chartering of buses in the normal sense of that term. There are no authorized groups that can contract for charter service. No group, per se, will undertake to charter an entire bus and pay charter costs irrespective of the number of daily riders. The proposed service is simply and purely "special operations". The grant of charter authority unduly and improperly expands the authorization beyond what is sought or needed and what the record will justify.

PETITION FOR RECONSIDERATION BY ROCKLAND COACHES, INC.
JULY 29, 1976

is not uncommon. Review Board Number 1, in Congregation Zemach David, supra, granted authority:

"between the site of the Zemach David Synagogue, in New Square (Rockland County), N.Y., and the site of the Beth Israel Synagogue, in Monsey, Rockland County, N.Y., on the one hand *****"

The Commission, consistent with sound, administrative practice, should restore the origin delineation of Monsey as set forth in the Administrative Law Judge's Initial Decision.

THE DESTINATION AUTHORITY

The riders supporting the instant application indicated, of record, that their full present and future needs would be met if applicant were authorized to operate to and from five locations in Manhattan, (New York County) and Brooklyn, (Kings County). The Administrative Law Judge authorized service to and from those five locations. Review Board Number 2, however, would enlarge the grant to and from:

"points in New York and Kings County"

While Rockland will voice no objection here to the Kings County grant, it must strenuously object, based on the record, its own authority and existing services, to an unlimited New York County authorization. Such an unrestricted

PETITION FOR RECONSIDERATION BY ROCKLAND COACHES, INC.
JULY 29, 1976

grant would be deleterious to present charter service, unnecessary for the supporting riders needs, and would constitute wasteful transportation, contrary to the public interest.

If a grant specifically setting forth the New York and Kings Counties locations, as in the Administrative Law Judge's Initial Decision, is improper, and we so no reason why it should be held to be improper, then it is suggested as an alternative that the grant of authority be limited to that area in New York County:

"On and east of Whitehall Street, Broadway, Canal Street and the Avenue of the Americas (Sixth Avenue) to 50th Street, thence east on 50th Street to the East River."

The above description is readily ascertainable and easily policed. It sets forth a concise and cohesive portion of New York County. As expressed it is more than generous as related to the record needs of the riders herein. It also preserves the primary charter and special services operation markets of the existing carriers.

The suggested New York County restriction should be compared to the New York County restricted grant by Review Board Number 1 in the Zemach David case, supra, as follows:

"those in New York County (Manhattan) on and east of Trinity Place, Church Street, and The Avenue of the Americas (Sixth Avenue) to Central Park South, thence Central Park

PETITION FOR RECONSIDERATION BY ROCKLAND COACHES, INC.
JULY 29, 1976

South to Central Park West, thence Central Park West and Eighth Avenue to the Harlem River."

See also the delineation and partial New York County grant approved by Division 1 in Cheetah Charter Bus Service Company, Inc., Common Carrier Application, Docket No. MC-133573, served May 8, 1970, and see also Patrick Tours and Travel, Inc., Docket No. MC-130271, dated December 22, 1975.

CONCLUSION

It is respectfully submitted that reformation of the Decision and Order of Review Board Number 2, in the instant proceeding, to the extent set forth as above, would be fully consistent with the record facts, would completely satisfy the riding needs of the supporting residents, and would undertake to preserve the basic spirit of the stipulation entered into among the parties and approved by the Administrative Law Judge. For all of the reasons set forth, Rockland respectfully urges that the Commission reconsider and reform the Decision and Order as indicated.

Respectfully submitted,

PETITION FOR RECONSIDERATION BY ROCKLAND COACHES, INC.
JULY 29, 1976

ROCKLAND COACHES, INC.

BY:

S.S. Eisen
S.S. EISEN

and

W.C. MITCHELL
370 Lexington Avenue
New York, N.Y. 10017

Of Counsel:

EISEN AND MITCHELL
370 Lexington Avenue
New York, N.Y., 10017

July 29, 1976

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing document upon the parties of record in this proceeding by mailing a copy thereof to each of them in first class mail, postage prepaid.

Dated at New York, New York, this 29th day of July, 1976.

S.S. Eisen
S.S. EISEN

REPLY OF AUGUST 11, 1976 OF MONSEY TRANSPORTATION CORP.

Before the
INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-141113

MONSEY TRANSPORTATION CORP.,
Applicant

RESPONSE TO PETITION
OF
ROCKLAND COACHES, INC.,
Protestant.

MONSEY TRANSPORTATION CORP., Applicant,
by its attorney Harvey L. Strelzin, Esq., for its response
to the petition of ROCKLAND COACHES, INC., Protestant,
respectfully states that as will be demonstrated herein,
there is no ground in fact or in law for reconsideration
and modification as requested by Protestant.

I.

The statement of facts and findings by the
Administrative Law Judge, affirmed and adopted by the Review

REPLY OF AUGUST 11, 1976 OF MONSEY TRANSPORTATION CORP.

Board, wholly support the enlargement of the application to one seeking authorization as a common carrier, but over irregular routes, instead of as a contract carrier, and the finding by the Review Board that the "present and future public convenience and necessity require operation by Applicant of the service described in the Appendix." This is so because the Appendix, in particularizing the routes and restricting the authorized service to members of the subject congregations and yeshivas, ipso facto limited the Applicant to the parameter of special and charter operations, thereby also removing the threat of impingement upon the service of Protestant. Absent such a threat, absent any showing by Protestant that the Review Board had mistaken or overlooked any material fact, absent any offer of newly discovered evidence sufficient to sustain a contrary result, the Protestant wholly fails to establish either that the decision and order are unsupported by the substantial evidence and the record, or that the result reached by the Review Board was arbitrary and capricious, or an abuse of discretion, or that the Review Board had exceeded its power and jurisdiction.

II.

The decision and order of the Review Board, contrary to the contentions of the Protestant, do not actually

REPLY OF AUGUST 11, 1976 OF MONSEY TRANSPORTATION CORP.

enlarge the scope of the authority granted to the Applicant, even though it will be denominated a common carrier. The record and evidence conclusively established, as recognized by the Review Board, that the Applicant did not seek authority to provide service to the general public. The authorization sought by Applicant was expressly limited to members, and no others, of Jewish orthodox congregations and yeshivas, between the points particularly specified in the route descriptions supplied by the Applicant, and particularized in the Appendix as the service authorized. It is clear from the decision of the Review Board that the modification of the application from that of a contract carrier to that of a common carrier, was solely responsive to the recognition of the fact that the number of such congregations and yeshivas might exceed the "limited number of persons" specified in the definition of a contract carrier contained in Sec. 203 (a) (15) of the Interstate Commerce Act. Therefore, to maintain definitional verity, the service proposed by the Applicant was more properly denominated that of a common carrier in the sound exercise of discretion. Further, the very limitations and restrictions imposed by the Appendix on the service authorized, conclusively eliminates the possibility as well as the probability that the Applicant could, without risking

REPLY OF AUGUST 11, 1976 of MONSEY TRANSPORTATION CORP.

revocation of its permit, expand its service to that of an ordinary, regular common carrier, servicing the general public in competition with the Protestant or other common carriers similarly situated.

It is noteworthy that the Protestant offers no proof whatsoever that the Applicant in truth, as claimed, proposes to transport passengers other than those to whom it is restricted by the decision and order of the Review Board. Indeed, the Protestant even admits that the Applicant's service in fact will be only a special operation. In the face of this admission, the Protestant's objection to inclusion of chartering in the Applicant's special operations is patently specious. Given the limitations and restrictions specified in the Appendix, any chartering by the Applicant is equally limited and restricted to the particularized routes and to members of Jewish orthodox congregations and yeshivas. Therefore, by extension, the Protestant cannot be heard to say that the grant of charter authority "unduly and improperly expands the authorization beyond what is sought or needed or what the record will justify." Moreover, the objections of the Protestant to "charter operations" are not based on the record, but are nothing more than a conjectural, hypothetical construct, designed to create a distinction without a real difference between "special operation" and "chartering".

REPLY OF AUGUST 11, 1976 of MONSEY TRANSPORTATION CORP.

III.

That Monsey, New York, the origin territory, is an "unincorporated hamlet", is totally irrelevant. The limitations and restrictions of the authorized service plainly apply not to Monsey as a general territory, but to members of Jewish orthodox congregations and yeshivas who happen to be inhabitants of Monsey. The only relevant administrative and enforcement frame of reference is thus spelled out literally and no possible controversy can arise from the designation of Monsey as the origin territory, notwithstanding that it is or may be an "unincorporated hamlet" or even is or may be "without discernible and legally established boundaries". Whether passengers transported by the Applicant are or are not members of the subject Jewish orthodox congregations and yeshivas is a readily ascertainable fact, subject to readily applied regulatory sanctions in case of violation. Thus, again, the objections of the Protestant with respect to the origin territory are not based on facts, but on speculation and conjecture.

It is the same with regard to the Protestant's objections to the destination authority. Applicant repeats, the routes in Manhattan (New York County) are particularized in the Appendix. Not only does the Protestant usurp the

REPLY OF AUGUST 11, 1976 of MONSEY TRANSPORTATION CORP.

function of the Review Board in proposing a particular alternative destination authority in New York County, but it is apparent that the real purpose of the Protestant is to remove the Applicant to points in New York County as remote as possible from the Protestant's own operations, in utter disregard of the convenience and necessity of the passengers to be transported by the Applicant. The destination authority in New York County specified by the Appendix is certainly "readily ascertainable" and as "easily policed" as the alternative proposed by the Protestant. Above all, the destination authority in New York County as particularized by the Appendix, responds immediately to the record needs of the Applicant's riders and constitutes the only sensible routing in relation to the entire trip, while the area in New York County described by the Protestant would take the riders roundabout and far away from the direct, shortest way in which they must go if their record needs are to be preserved in relation to the routes to be traveled by the Applicant between Monsey on the one hand and Manhattan and Brooklyn on the other hand. None of the cases cited by the Protestant are either analogous or apposite because all of them rest on wholly different facts and objectives.

CONCLUSION

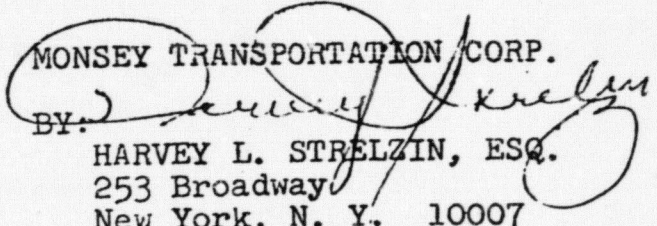
Applicant respectfully submits that the

REPLY OF AUGUST 11, 1976 of MONSEY TRANSPORTATION CORP.

petition of ROCKLAND COACHES, INC., should and must be dismissed on the facts and the law.

Respectfully submitted,

MONSEY TRANSPORTATION CORP.

BY: 

HARVEY L. STRELZIN, ESQ.
253 Broadway
New York, N. Y. 10007

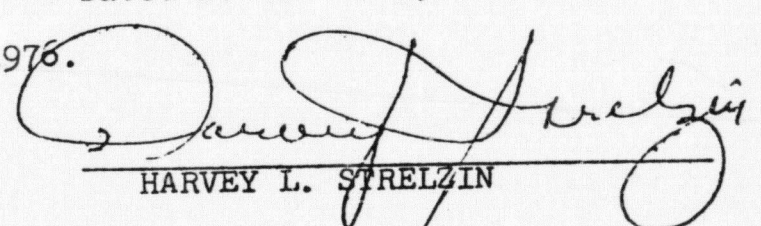
Its Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing document upon the parties of record in this proceeding by mailing a copy thereof to each of them by first class mail, postage prepaid.

Dated at New York, New York, this

11th day of August, 1976.


HARVEY L. STRELZIN

HUDSON TRANSIT LINES, INC. PETITION FOR RECONSIDERATION
Aug. 23, 1976

BEFORE THE
INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-141113

MONSEY TRANSPORTATION CORP.
CONTRACT CARRIER APPLICATION

PROTESTANT'S PETITION FOR RECON-
SIDERATION AND MODIFICATION OF THE
DECISION OF REVIEW BOARD NO. 2

COMES NOW, HUDSON TRANSIT LINES, INC. (HUDSON), Pro-
testant, and respectfully submits this Petition for Reconsideration and
Modification of the Order of Review Board No. 2 of June 22, 1976,
served July 20, 1976. For reasons herein indicated, it is palpably
clear that this apparent inconsequential case presents issues of general
transportation importance.

STATEMENT

As the Commission knows Hudson is a large commuter and inter-city common carrier of passengers. It protested the instant application wherein the applicant sought authority to transport passengers as a contract carrier between Monsey, New York on the one hand, and, on the other, certain specified locations in New York City. The application was protested for the reason that Monsey is proximate to the area served by Hudson and further Hudson knowing the nature of the support of the application was concerned with regard to the restrictions which would be imposed.

On May 10, 1976 an Administrative Law Judge after hearing testimony recommended a proposed grant of contract carriage wherein the application would enter into contracts with Jewish Orthodox Congregation* and Yeshivas located in the described Monsey area with the transportation restricted to members of said Congregations and Yeshivas. Consistent with other decisions, the Administrative Law Judge also restricted the territorial areas to be served.

Considering that the contract carrier nature of the restrictions assured that the general public would not be served, it is understandable why Hudson withdrew from the proceeding. To be sure, Hudson did not desire a situation to arise where on the basis of support by a given ethnic or racial group an applicant is granted unrestricted authority to serve an

HUDSON TRANSIT LINES, INC. PETITION FOR RECONSIDERATION
August 23, 1976

area which is presently the subject of common carriage by an existing operator.

Regretfully, this is the situation which has arisen by virtue of the decision of Review Board No. 2 which has granted the applicant common carriage with regard to the transportation of passengers in special and charter operations. In short, the applicant can between New York, N.Y. and Monsey, N.Y. provide the same service as a regular route carrier serving the general public except that it can operate over irregular routes. The problem is compounded when you consider that other carriers have established their operations of serving the general public while here Monsey is granted common carriage based upon the support from a limited class of the public.

The significance of this case and its precedent nature can only be understood within the context of the pending case of United Jewish Organizations of Williamsburgh, Inc., MC-140091, wherein an applicant is seeking on a contractual basis with Jewish organizations the right to operate between New York, N.Y. on the one hand, and, on the other hand, Rockland, Orange, Ulster and Sullivan Counties in New York. Surely, the Commission does not contemplate that simply on the basis of support from a given religious or racial group that an applicant because of such support would receive authority to serve the general public, when in fact the applicant admits that its service is not geared

HUDSON TRANSIT LINES, INC. PETITION FOR RECONSIDERATION
August 23, 1976

or intended for the general public. Indeed, in this proceeding the applicant unequivocally has affirmed the fact that its service is restricted to a class of the public.

I

THE SERVICE PROPOSED IS CONTRACT CARRIAGE

Initially, it should be noted that the decisional precedents are legion to the effect that it is the obligation of a common carrier to serve the general public. The applicant in this proceeding unequivocally states that its service is going to be restricted to a certain class of the public for the reason that its service is designed and intended to meet the needs of that portion of the public. Kaufman Extension, 30 M.C.C.517; and Canny Trucking Co., Inc., 17 M.C.C.559. This issue was in part discussed in Transportation Activities of Fish Bach Trucking Co., 61 M.C.C. 185, 191, wherein it was specifically held that to "negate a public holding out in order to establish contract carriage as opposed to common carriage, one claiming the status of a contract carrier must show some sort of specialization." Such is the case at bar for it is indisputably clear that the applicant intends to limit itself to a given segment of the public. In its pleading of August 11, 1976, the applicant repeats that the only members of the public which it desires to serve, and no others, are those of Jewish Orthodox Congregations and Yeshivas.

It is thus clear that not only is the proposed grant of common carrier authority contrary to the applicant's own intentions but more

HUDSON TRANSIT LINES, INC. PETITION FOR RECONSIDERATION
August 23, 1976

importantly the grant of common carriage authority will penalize the applicant since it will obligate the applicant to serve the general public and thus disrupt its entire service. The applicant's proposal is geared to the alleged distinct needs of a class and no longer will the applicant be restricted to serving this class.

Without even considering this issue, the Order of July 20th predicated the grant of common carriage based upon the fact that there were some 32 some odd congregations involved. Yet, an analysis of the decisional precedents leads to the irresistible conclusion that we are here concerned with a specific class of "shipper" or of "passenger" and therefore contract carriage is involved regardless of the number of contracts which might be included. Armored Motor Service, Inc. 73 M.C.C. 433; Armored Carriage Corp. Extension, 92 M.C.C. 336, 102 M.C.C. 411; Lane and Kaplan Extension - New Jersey 78 M.C.C. 547; Howell Trucking Co., Inc. Extension 86 M.C.C. 643; S. Klein Trucking Corp. Contract Carrier Application 89 M.C.C. 53; Crete Car Corp. 117 M.C.C. 634. The cited decisions speak for themselves and do not require detailed elaboration. It is sufficient to note that the reasoning therein parallels the instant proceeding. The class concept arises where service "is as cited in the cases unusually specialized and unique." Here, we have members of the public who desire to travel together because of

HUDSON TRANSIT LINES, INC. PETITION FOR RECONSIDERATION
August 23, 1976

their separate and distinct religious requirements which requirements, including prayer sessions, cannot obviously occur during the course of common carriage.

All of these cases recognized that notwithstanding that unlimited contracts were involved that the shipper was a distinct and separate class and thus contract carriage was involved. Here, all of the passengers have a certain religious characteristic and they are traveling together because of this association. This is not the case of a corporation with unlimited subsidiaries manufacturing multiple items but rather we are here concerned with the same type of person who may be associated with multiple congregations.

Hudson submits also that the Commission should consider the implications of holding that service such as here involved is common carriage and involves special operations. Once such a certificate is granted, the holder thereof no longer is restricted to serve the class which supported the application but rather can serve the entire general public notwithstanding that the supporting class may constitute only 1% of the general riding public in the subject area. It is for this reason that Hudson respectfully asserts that its entire passenger bus operations

HUDSON TRANSIT LINES, INC. PETITION FOR RECONSIDERATION
August 23, 1976

are in jeopardy if the subject service is found to be contract carriage. There is nothing to preclude the holder of such authority from serving the general public notwithstanding that it may be found that the general public is adequately being served.

CONCLUSION

In summary, we are concerned with a restricted class and the existence of this restricted class dictates the grant of only contract carriage. But, over and above the aforementioned, the paramount issue from one of general transportation policy is whether or not each and every distinct group which applies for passenger authority throughout the United States is to be granted common carriage authority, in special or charter operations. To repeat, the only difference between the proposed special operations and the regular route operations conducted by Greyhound, Trailways, Short Line or any other bus company is that the instant proposal is not over regular routes.

Does the Commission desire to destroy the regular route structure by granting unrestricted special operations to each and every group which supports an application? We are fully cognizant of pressures relating to matters involving applications supported by racial or religious or other alleged unique factors. However, the paramount issue and the paramount consideration must pertain to service for the general public. Is the general public going to be fragmented into unlimited specialized

HUDSON TRANSIT LINES, INC. PETITION FOR RECONSIDERATION
August 23, 1976

groups giving rise to unlimited special operations?

The significance of this case is that there is now pending before the Commission other proceedings involving similar issues and we are quite confident that there will be further applications filed involving other areas of the country. The time has come to analyze the situation in its practical day to day application to the bus industry. Such an approach dictates a finding of contract carriage.

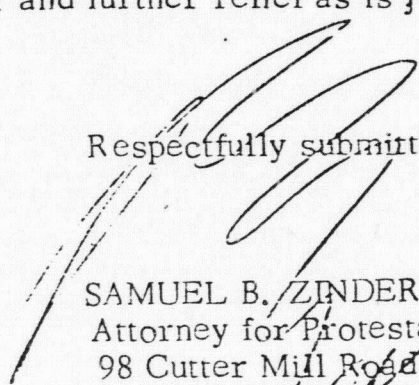
The applicant argues that the issue is irrelevant since it intends only to serve this limited community. The issue is not irrelevant for its statutory obligation is clear once the certificate is issued and further there is nothing to prohibit the certificate in the future from being used for other purposes.

Lastly, Hudson emphasizes the fact that its willingness not to oppose the grant of contract carrier authority in the case at bar is not intended or should it be construed in any other proceeding as implying or serving the basis for a finding that Hudson is not interested or able to meet the requirements of this segment of the public. Hudson withdrew in this proceeding as a protestant because the Monsey area is merely peripheral to our operating territory. We are concerned, however, with the issues in the case because of their application to other proceedings both pending and in the future.

HUDSON TRANSIT LINES, INC. PETITION FOR RECONSIDERATION
August 23, 1976

WHEREFORE, HUDSON TRANSIT LINES, INC., for the reasons above stated respectfully requests that an order be entered affirming the decision of the Administrative Law Judge, vacating the decision of Review Board No. 2; and granting such other and further relief as is just and proper in the premises.

Respectfully submitted,



SAMUEL B. ZINDER, P.C.
Attorney for Protestants
98 Cutter Mill Road
Great Neck, N.Y. 11021
(516) 482-0881

Dated: August 23, 1976

REPLY OF AUGUST 26, 1976 OF MONSEY TRANSPORTATION CORP.

Before the
INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-141113

MONSEY TRANSPORTATION CORP.,
Applicant

RESPONSE TO PETITION
OF
HUDSON TRANSIT LINES. INC.,
Protestant.

MONSEY TRANSPORTATION CORP., Applicant,
by its attorney Harvey L. Strelzin, Esq., for its response
to the petition of HUDSON TRANSIT LINES, INC., Protestant,
respectfully states that as will be demonstrated herein,
there is no ground in fact or in law for reconsideration
and modification as requested by Protestant.

I.

The statement of facts and findings by the
Administrative Law Judge, affirmed and adopted by the Review

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Board, wholly support the enlargement of the application to one seeking authorization as a common carrier, but over irregular routes, instead of as a contract carrier. The finding by the Review Board that the "present and future public convenience and necessity require operation by Applicant of the service described in the Appendix" is equally supported by the record. This is so because the Appendix, in particularizing the routes and restricting the authorized service to members of the subject congregations and yeshivas, ipso facto limits the Applicant to the parameter of the special and charter operations specified by the Appendix. Thereby the threat of impingement upon the service of Protestant, or any other common carrier, is removed. Absent such a threat, absent any showing by Protestant that the Review Board had mistaken or overlooked any material fact, absent any offer of newly discovered evidence sufficient to sustain a contrary result, the Protestant wholly fails to establish either that the decision and order are unsupported by the substantial evidence and the record, or that the result reached by the Review Board was arbitrary, capricious, or an abuse of discretion, or that the Review Board had exceeded its power and jurisdiction.

II.

The decision and order of the Review

Board, contrary to the contentions of the Protestant, do not actually enlarge the scope of the authority granted to the Applicant, even though it will be denominated a common carrier. The record and evidence conclusively established, as recognized by the Review Board, that the Applicant did not seek authority to provide service to the general public. On the contrary, the authorization sought by Applicant was expressly limited to members, and no others, of Jewish orthodox congregations and yeshivas, between the points particularly specified in the route descriptions supplied by the Applicant, and particularized in the Appendix as the service authorized. It is clear from the decision of the Review Board that the modification of the application from that of a contract carrier to that of a common carrier, was solely responsive to recognition of the fact that the number of such congregations and yeshivas might exceed the "limited number of persons" given as the definition of a contract carrier in Sec. 203 (a) (15) of the Interstate Commerce Act. Therefore, to maintain definitional verity, the service proposed by the Applicant was more appropriately denominated that of a common carrier in the sound exercise of discretion. Further, the very limitations and restrictions imposed by the Appendix on the service authorized, conclusively eliminates

the possibility as well as the probability that the Applicant could, without risking revocation of its permit, expand its service to that of an ordinary, regular common carrier, servicing the general public in competition with the Protestant or other common carriers similarly situated.

It is noteworthy that the Protestant offers no proof whatsoever that the Applicant in truth, as claimed, proposes to transport passengers other than those to whom it is restricted by the decision and order of the Review Board. Indeed, the Protestant even admits that the Applicant's service in fact will be only a special operation. In the face of this admission, the Protestant's objection is patently specious. Given the limitations and restrictions specified in the Appendix, the Protestant cannot be heard to say that the decision and order of the Review Board unduly and improperly expands the authorization beyond what is sought or needed or what the record will justify. Thus, the objection of the Protestant is not based on the record, but is nothing more than a conjectural, hypothetical construct, having no relation to the actual facts, in an attempt by the Protestant to foretell an event that cannot come to pass.

III.

The limitations and restrictions of the authorized service are plain and unambiguous. The only

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relevant administrative and enforcement frame of reference is spelled out literally and precisely. Whether passengers transported by the applicant are or are not members of the subject Jewish orthodox congregations and yeshivas, and whether Applicant is or is not adhering to the specified routes, are readily ascertainable facts, subject to being readily policed and subject to readily applied regulatory sanctions in case of violation. Thus, again, the objection of the Protestant is not based on facts, but on speculation and conjecture.

Finally, it is incomprehensible in logic and in law for Protestant to argue that Applicant will be obligated to serve the general public in the face of the Appendix restrictions, just because the authority granted is that of common carriage. Such an argument confuses shadow with substance, semantics with facts. Above all, the decision and order of the Review Board not only respond immediately to the record needs of the Applicant's riders, but are soundly based on reason and common sense.

CONCLUSION

Applicant respectfully submits that the petition of HUDSON TRANSIT LINES, INC. should and must be

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dismissed on the facts and the law.

Respectfully submitted,

MONSEY TRANSPORTATION CORP.

BY: *S/ Harvey L Strelzin*
HARVEY L. STRELZIN, ESQ.
253 Broadway
New York, N. Y. 10007

Its Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this date
served a copy of the foregoing document upon the parties of
record in this proceeding by mailing a copy thereof to each
of them by first class mail, postage prepaid.

Dated at New York, New York, this

26 day of August, 1976.

S/ Harvey L Strelzin

HARVEY L. STRELZIN

NATIONAL BUS TRAFFIC ASSOCIATION PETITION FOR LEAVE
TO INTERVENE September 20, 1976

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D. C.

In the Matter of:)
Monsey Transportation Corp.) Docket No. MC-141113
Contract Carrier Application)

PETITION FOR LEAVE TO INTERVENE

The National Bus Traffic Association [NBTA] respectfully petitions the Commission for leave to intervene in the captioned proceeding for the purpose of filing a petition seeking reconsideration of the Stay Decision and Order of Review Board Number 2, dated June 22, 1976 (served July 20, 1976)^{*/}, and for a re-opening of the proceeding for further evidence.

I

By application filed July 3, 1975, as amended, Monsey Transportation Corp., of Spring Valley, N.Y., sought authority as a contract carrier of passengers, over irregular routes, between the unincorporated community of Monsey, N.Y., on the one hand, and certain specific locations in New York, N.Y., on the other, limited to serving members of the Orthodox Jewish Community in Monsey, N.Y.

Three motor common carriers (Hudson Transit Lines, Inc., Rockland Coaches, Inc., and Transport of New Jersey) initially

^{*/} Notice published in the Federal Register of August 19, 1976, at page 35113.

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protested the application, but withdrew prior to the presentation of applicant's case in chief at the hearing held on April 20, 1976. These withdrawals resulted from the acceptance by the Administrative Law Judge of a restrictive amendment to the then pending application which clarified the scope of the authority sought.

In his initial decision, the Administrative Law Judge found that operation by the applicant, as specified in the amended application, would be consistent with the public interest and the National Transportation Policy and that an appropriate permit should be issued. However, upon review, on its own motion, Review Board Number 2 found that the proposed service was actually that of a common carrier by motor vehicle and that the territorial description used was too narrow, administratively unfeasible, unduly restrictive and difficult to enforce. The Board, therefore, granted a much broader common carrier authority than the contract carriage sought by applicant and ordered further publication of this grant in the Federal Register to afford notice of the broadened grant with opportunity for previously disinterested parties affected by the change to participate.

II

The National Bus Traffic Association is a not-for-profit organization, incorporated under the laws of Illinois, with its headquarters located at 506 South Wabash Avenue, Chicago, Ill.

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Any intercity regular-route motor common carrier of passengers may become a member of NBTA, and substantially all such carriers are members. Currently, the membership list contains the names of approximately 365 passenger carriers.

Under its Articles of Association, NBTA is authorized to represent its member carriers in administrative or judicial proceedings involving issues of industry-wide importance. The proposed grant of common carrier authority, albeit limited only to special and charter operations, when the application itself sought only authority to engage in contract carriage for a specific religious group, and then only to a very limited destination area commensurate with the public need shown, raises such an issue.

NBTA's member carriers operate in all 50 states, the District of Columbia, Canada and Mexico. These carriers perform three basic types of passenger transportation service. The first is regular-route, daily scheduled bus service, performed throughout the country under published time schedules that apply daily irrespective of the number of passengers carried. The second type is charter coach operations, under which a bus is chartered by, or on behalf of, a group at a published rate per mile or a time charge for the exclusive use of the bus by the charter party. Most of NBTA's member carriers hold broad charter coach authority. The third type is special service or special

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operations, performed over authorized regular routes under tariffs which provide that, upon purchase of a specified minimum number of tickets from one point to another point, the purchasers will be afforded exclusive occupancy of the bus.

The member carriers of NBTA have a direct and substantial interest in this proceeding. If left undisturbed, the order of the Review Board will allow special categories of persons, related on religious or ethnic grounds, to lend support to a contract carrier applicant to serve their specialized transportation needs and then have that application and grant be translated by the Review Board into common carrier authority. Such a grant, without the statutory showing of public convenience and necessity set out in section 207, Interstate Commerce Act, appears contrary to law and would act to allow service unrestricted to the sponsoring group or groups in direct competition with existing regulated common carriers without consideration of those carriers' statutory rights.

There was nothing in the original contract carriage application which seriously affected the interests of the NBTA members, nor was there any indication of an issue of general importance prior to the issuance of the stay decision and order of the Review Board that could have alerted NBTA to the possibility that the Board would conclude that applicant's proposed service should be conducted as a common carrier. Therefore, NBTA made no effort to participate in the proceeding from the

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beginning; nor does NBTA, as a matter of policy, participate in what appear to be routine applications seeking authority to transport passengers for hire. When the stay decision and order herein was issued and distributed, NBTA recognized that it represented a total departure from the accepted handling of such applications by the Commission and established a new and potentially dangerous precedent for the passenger motor common carrier industry.

As noted above, one of the functions of NBTA is to participate in proceedings before this Commission in which issues affecting the motor bus industry in general are under consideration. The subject order raises just such an issue and threatens to thwart the statutory regulation of the industry by allowing the lesser burden of proof in a contract carriage proceeding to substitute for the more stringent showing required by section 207 of the Interstate Commerce Act.

III

NBTA submits concurrently herewith its petition for: (1) reconsideration of the order of Review Board Number 2, and (2) a reopening of the instant proceeding for further hearing to clarify the record on a number of essential evidentiary points. The petition raises no issue not currently before the Commission on the question of contract carriage by applicant under the conditions and circumstances cited in the application and does

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not broaden the issues in this proceeding beyond those raised by the decision of the Review Board.

It should be noted in particular that NBTA takes no position, pro or con, on the question whether the service proposed by applicant is consistent with the public interest and the National Transportation Policy. Rather, NBTA's sole concern is that the Commission recognize that the grant of common carrier authority, even though limited to charter and special operations, on the record established to date in this proceeding is beyond the scope of the application and the proof presented in support thereof. The individual motor carriers, which might have presented evidence in the proceeding, but which relied upon the application as seeking contract carrier authority, now require such an evidentiary opportunity. Unless the decision is vacated and the report of the Administrative Law Judge adopted, the case should be reopened for further hearing with additional testimony from all parties.

Wherefore, the National Bus Traffic Association requests that the Commission allow it to intervene in this proceeding for the purpose of filing its petition for reconsideration and reopening of the proceeding, submitted concurrently herewith,

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to the order of Review Board Number 2 dated June 22, 1976
(served July 20, 1976).

Respectfully submitted,

NATIONAL BUS TRAFFIC ASSOCIATION

By Its Attorneys:

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OF COUNSEL:

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and
1600 Wilson Boulevard
Arlington, Virginia 22209

DUE AND FILED: September 20, 1976

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 1976,
a copy of the foregoing petition was served on all parties
of record herein, by first class United States mail, postage
prepaid.

Richard A. Ward

NATIONAL BUS TRAFFIC ASSOCIATION PETITION FOR
RECONSIDERATION September 20, 1976

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D. C.

In the Matter of:)

Monsey Transportation Corp.)
Contract Carrier Application)

Docket No. MC-141113

PETITION FOR RECONSIDERATION

The National Bus Traffic Association (NBTA) submits its petition for reconsideration of the Stay Decision and Order of Review Board Number 2, dated June 22, 1976 (served July 20, 1976),^{*/} and for a reopening of the proceeding for further evidence, and in support thereof states as follows:

INTRODUCTION

By application filed July 3, 1975, as amended, Monsey Transportation Corp., of Spring Valley, N.Y., sought authority as a contract carrier of passengers, over irregular routes, between the unincorporated community of Monsey, N.Y., on the one hand, and certain specific locations in New York, N.Y., on the other, limited to serving members of the Orthodox Jewish community in Monsey, N.Y.

Three motor common carriers (Hudson Transit Lines, Inc., Rockland Coaches, Inc., and Transport of New Jersey) initially protested the application, but withdrew prior to the presentation

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of applicant's case in chief at the hearing held on April 20, 1976. These withdrawals resulted from the acceptance by the Administrative Law Judge of a restrictive amendment to the then pending application which clarified the scope of the authority sought.

In his initial decision, the Administrative Law Judge found that operation by the applicant, as specified in the amended application, would be consistent with the public interest and the National Transportation Policy and that an appropriate permit should be issued. However, upon review, on its own motion, Review Board Number 2 found that the proposed service was actually that of a common carrier by motor vehicle and that the territorial description used was too narrow, administratively unfeasible, unduly restrictive and difficult to enforce. The Board, therefore, granted a much broader common carrier authority than the contract carriage sought by applicant and ordered further publication of this grant in the Federal Register to afford notice of the broadened grant with opportunity for previously disinterested parties affected by the change to participate.

INTEREST OF NATIONAL BUS TRAFFIC ASSOCIATION

The NBTA's position as an association representing the interest of member regular-route motor common carriers of passengers in administrative or judicial proceedings, involving issues of industry-wide importance, and its direct and substantial interest in the outcome of this proceeding have been set

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forth in full in the petition for leave to intervene, filed concurrently herewith. That position statement is adopted and incorporated herein by reference.

ARGUMENT

I

THE PROCEEDING SHOULD BE REOPENED

At the hearing in this proceeding, held in New York, N.Y., on April 20, 1976, and as a preliminary matter, the Administrative Law Judge accepted as Exhibit 1 an amended recitation of the authority sought by the applicant, Monsey Transportation Corporation. This amended the application in such a way that it became clear to the three protesting bus companies that the contract carrier authority sought by applicant was sufficiently restricted, as to both territory (origin as well as destination) and class of passengers, that their interests as motor common carriers of passengers serving areas of New York adjacent to the Monsey area were fully protected, and their counsel received permission to withdraw from the hearing. The amended application reads as follows:

Authority is sought to operate as a contract carrier by motor vehicle, over irregular routes, transporting passengers and their baggage in the same vehicle with passengers between that area in Monsey, New York bounded on the north by Viola Road; on the east by State Highway 306 from Viola Road to Kearsing Parkway, to the western boundary of the Village of Spring Valley; on the south by State Highway 59; and on the west by College Road

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on the one hand, and, on the other (1) 46th-47th Streets and Sixth Avenue, Manhattan, New York, (2) 34th Street and Fifth Avenue, Manhattan, New York, (3) Broadway and Houston Street, Manhattan, New York, (4) Lee Avenue and Rodney Street, Brooklyn, (5) 49th Street and 13th Avenue, Brooklyn, New York under continuing contract with Jewish Orthodox congregations and Yeshivas located in the described Monsey area; with transportation restricted to members of said congregations and Yeshivas. (Tr. 6-7)

Subsequent to the withdrawal of the only protestants to the application, the applicant presented its proof of a need for service consistent with the public interest and the National Transportation Policy, which proof was accepted as sufficient for the purposes of the application by the Administrative Law Judge.

As part of this proof, Chaim Lunger, president of applicant corporation, gave evidence as follows:

1. He and his wife were the sole stockholders and officers of the corporation, which corporation was duly incorporated in the State of New York. (Tr. 9-10)
2. Witness was a licensed bus driver and was then driving for a Jewish congregation in Rockland County. (Tr. 10)
3. The corporation's financial statement shows a net worth of approximately \$88,000. (Tr. 11-12)
4. Witness has lived in Monsey, N.Y., for 16 years, and knows that Orthodox families established and now live in the community. (Tr. 12)
5. The community has been established for 20 years, consists of members of this sect, has a goodly number of synagogues and Yeshivas (schools). (Tr. 13)

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6. The residents work in the City of New York and in Brooklyn, N.Y., and travel to work in congregational buses, in car pools, and in minibuses or (Tr. 13-14)
7. Witness seeks to consolidate this travel, to have one bus company serve the community, and the officers of the various religious organizations are prepared to contract with the witness for this service for which there is a need. (Tr. 14)
8. Witness is prepared financially and operationally to serve the community. (Tr. 14-15)
9. Proposed service differs from the ordinary in that men and women sit apart on the bus and there are special seats for prayer and study. (Tr. 15-16)
10. There are no intermediate stops, and no passengers are picked up outside of the origin area described in the amended application. (Tr. 16)
11. The community is predominantly made up of Hassidic Jews, the same passengers will make the round trip, with level ridership. (Tr. 17)
12. Approximately 32 congregations exist, with new synagogues or Yeshivas formed from time to time, the smallest about 30 people. (Tr. 18)
13. No service on Sabbath or on Sunday, return on Friday several hours prior to sundown. (Tr. 18-19)
14. Hours of operation--except Friday--depart between 7:00 and 9:00 A.M. and return between 3:00 and 6:00 P.M. (Tr. 19)

The next witness, Ronald Greenwald, a resident of Monsey, N.Y., testified to the following:

1. Has lived 7 years in Monsey, a community about 22 miles from New York City, most of whose inhabitants are Jews who left Brooklyn and the Bronx to settle there. (Tr. 20-21)
2. Population of Orthodox Jews in Monsey is about 2,500 families; with birth rate of 4.5 (3 times U.S. average); most keep jobs in New York. (Tr. 21)

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3. Hassidic Jews, in Monsey, without college training, have tradesmen jobs in New York City; i.e., sweaters, diamonds, or peddling. (Tr. 22)
4. Many Orthodox Jews in Monsey are non-Hassidic, but all wish to maintain separate male-female seating and other religious beliefs of Hassidics. (Tr. 22)
5. Travel to New York is by car pool and small buses of various congregations, adds 20-25 minutes travel time. (Tr. 23)
6. None of regular bus companies come to Monsey, all are within 2-3 miles of Monsey, must take taxi or car pool to buses, difficult, but witness makes it everyday. (Tr. 23)
7. Service of applicant necessary, and will aid other Jews to obtain work. (Tr. 23-24)
8. Applicant understands religious significance, the times they must meet, and when persons can pray on bus or leave after certain prayer. (Tr. 24)
9. Separate seating of men and women is by design and not by order; each sex would take separate seats in natural manner due to religious custom and beliefs. (Tr. 24)
10. Applicant is Orthodox Jew. (Tr. 24)
11. Monsey has 32 congregations. A congregation requires quorum of 10 male Jews who meet to pray. (Tr. 25)
12. Largest congregation in Monsey has 250 members. (Tr. 26)
13. Congregations average 40-50, and 3 or 4 per year are formed; congregations begin with 12 or 13, while Yeshivas begin with about 50. (Tr. 26)

The third witness, Jacob Bookson, also a resident of Monsey, N.Y., testified to the following:

1. He is an Orthodox Jew working in Brooklyn. (Tr. 27)

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2. Repeated previous witnesses' testimony about car pools and vans for various congregations. (Tr. 28)
3. Great need for applicant's service. (Tr. 28)
4. Monsey residents are basically Orthodox, with beliefs and customs of their own to which applicant will cater and replace the automobile travel. (Tr. 29)
5. His congregation would contract with applicant. (Tr. 29)

The next witness, Abraham Joseph, a resident of Monsey, N.Y., testified essentially as follows:

1. Has lived in Monsey 3 years; is Orthodox and adheres to Sabbath and all other Talmudic codes and ethics; congregation has 35-45 members, some of whom work in New York and travel by car, van, taxi, and infrequently by bus. (Tr. 30-31)
2. Definite need for applicant's service exists; other fares are \$10.50 per day, needs less expensive transportation. (Tr. 31-32)

The fifth witness was Moshe Wosner, also a resident of Monsey, N.Y. He testified to the following:

1. Witness is an Orthodox Jew, has lived in Monsey for 11 years; his answers would be the same to prior questions of other witnesses. (Tr. 33-34)
2. There is great need for applicant's service; and his congregation would enter into contract with applicant. (Tr. 34)

The applicant then took testimony from Gittie Herskotitz, a resident of Monsey for 21 years, who testified as follows:

1. Her parents are Orthodox Jews, as is the witness, and she follows the dictates and tenets of the faith. (Tr. 35)

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2. She is employed in Manhattan and travels there daily by car pool or bus. (Tr. 35)
3. She thinks there is a need for applicant's service. (Tr. 36)
4. She is not a member of a congregation or Yeshiva, but her father is a member. She goes to Yeshiva on High Holy Days. (Tr. 36)

The last witness called by applicant, Yoel Lunger, a resident of Spring Valley, N.Y., testified essentially as follows:

1. He knows the Monsey area, visits there every few days, knows that religious people live in Monsey, and that there is a definite need for the service of applicant. (Tr. 37)
2. His answers to the same questions put to other witnesses would be the same. (Tr. 38)
3. His congregation would execute a contract with applicant. (Tr. 38)
4. He is employed by a Yeshiva as a school bus driver, and is being asked by parents for rides on the school bus, but must refuse. Eighty percent of the parents would require bus service to New York city. (Tr. 39)

Summarizing the abstract of testimony given by applicant's witnesses, the record essentially shows that:

- a. The Orthodox Jewish community of Monsey, N.Y., has a specialized requirement for transportation into New York City, in that the members wish to conduct prayer and study sessions aboard the buses in accordance with their traditions and religious beliefs. These traditions involve segregated seating by sex.
- b. The Orthodox Jewish community in Monsey makes up most of the local population, they are organized into about 32 congregations, and these groups all wish to contract with applicant to serve their transportation needs.

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- c. Applicant claims and appears to be willing and able to execute and carry out contracts for such service to the Orthodox Jewish congregations of Monsey providing the distinctly specialized service desired, both as to hours of departure and return and the special seating.
- d. The transportation service presently being utilized by the community is not satisfactory for their purposes, but there is no evidence in the record as to what existing carriers could provide.

A careful review of the testimony elicited by applicant on this record indicates that, had a common carrier certificate been sought, the Commission would have demanded additional facts to prove the public convenience and necessity prior to approving it. The Commission set out the parameters of this proof when, in Pan-American Bus Lines Operation, 1 M.C.C. 190 (1936) it was said:

The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Without attempting to argue the merits of the applicant's case for contract authority, it readily can be determined that the evidence presented did not comport with that deemed essential to proving public convenience and necessity, and this must be shown before a certificate as a common carrier may be issued in

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conformance with section 207 of the Interstate Commerce Act. Moreover, the protesting carriers would not have withdrawn if the issues at the hearing had involved public convenience and necessity.

For example, the record begs for answers to these and other similar questions:

1. Since a common carrier has an obligation under its certificate to serve the general public without discrimination, A. L. Kauffman Extension of Operations--Toledo, Ohio, 30 M.C.C. 517, 518 (1941), how does applicant intend to serve residents of Monsey who are not Orthodox Jews and who may wish to avail themselves of applicant's proposed bus service to and from New York City?
2. What are the demographics of the Monsey community, other than the Orthodox Jewish community?
- 3a. Is there an organization of synagogues or Yeshivas to which the local congregations do or can belong that would qualify to contract with applicant on behalf of the identifiable 32 congregations in Monsey?
- b. Are the congregations and Yeshivas legal entities capable of executing enforceable contracts on behalf of the members, or would each member be required to execute the agreement on his own behalf in order to have binding agreements with the carrier?
- c. Would the several congregations and Yeshivas be willing to contract with applicant by becoming signatories to a single master agreement?
4. What service to the Monsey Orthodox Jewish community do the presently certificated passenger carriers provide or could they provide if called upon?
5. Are existing carriers already authorized to perform the service which the Review Board grants to applicant?

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6. Would common carrier service, of the type approved by the order of Review Board Number 2, endanger or impair the operations of the existing carriers in the Monsey, N.Y., area?
7. Would women, not Orthodox Jews or members of another Jewish sect, who wished to utilize applicant's proposed bus service be required to accept segregated seating on the bus during the prayer and study services, or would there be unrestricted seating for women throughout the vehicles?

With the above questions as a beginning, it is apparent to NBTAA that additional information needs to be placed before the Commission if any consideration is to be given to issuance of common carrier authority in this case. The record is inadequate because common carrier authority was never contemplated by the applicant, the protestants, or the Administrative Law Judge.

A common carrier by motor vehicle is partially defined in section 203(a)(14), Interstate Commerce Act, as "...any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers...." (Emphasis supplied.) The Commission stated, in Becker Transportation Co., Inc., Contract Carrier Application, 26 M.C.C. 487, 490 (1940), "that applicant serves the general public, and that is the controlling factor in determining its status as a carrier. We conclude that its operation was, and is, that of a common carrier." Where, as here, the carrier purports to serve only a portion of the general public; i.e., those of the Orthodox Jewish faith, then the holding out, which is the important aspect, is not to the general public, and a common carrier certificate may not be authorized.

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II

SEX DISCRIMINATION BY COMMON CARRIER PROHIBITED

The proposed grant of authority to applicant, as set out in the Stay Decision and Order of Review Board Number 2, authorizing operation in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of passengers and their baggage in the same vehicle with passengers, in special and charter operations, beginning and ending at Monsey, N.Y., and extending to points in New York and Kings Counties, N.Y., presents unique and sensitive problems due to the religious beliefs of the prospective passengers. From the testimony of the witnesses it has been shown that a significant aspect of the transportation needs of these members of the various congregations and Yeshivas is an ability while traveling to pray and study as their beliefs and traditions dictate. One of these religious traditions involves seating for the women separate and apart from the men. It is respectfully submitted that such separate seating on a common carrier of passengers, unless conducted while the motorbus was operating under a contract or charter for the exclusive use of the Jewish passengers, is sex discrimination and is contrary to law.

Section 216(d), Interstate Commerce Act, reads in pertinent part as follows:

It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce...to subject any particular

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person...to any unjust discrimination or any
undue or unreasonable prejudice or disadvantage in any respect whatsoever....

Further, the Urban Mass Transportation Act of 1964, 49 U.S.C. §1608, speaks to the subject of sex discrimination in mass transportation. The term "mass transportation" is defined therein as meaning "transportation by bus, rail or other conveyance, either publicly or privately owned, which provides to the public general or special service (but not including school buses or charter or sightseeing service) on a regular and continuing basis." Section 1068(f) of that chapter provides that:

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Assistance under this chapter or carried on under this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under Title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

While the regulations of the Interstate Commerce Commission, particularly 49 C.F.R. §1055.1, which prohibit a motor common carrier of passengers from operating "a motor vehicle in interstate or foreign commerce on which the seating of passengers is based upon race, color, creed or national origin", has not been rewritten to include a prohibition against sex discrimination, it is suggested by NBTA that the Urban Mass Transportation Act provisions now require this to be added. Unless applicant is

NATIONAL BUS TRAFFIC ASSOCIATION PETITION FOR RECONSIDERATION
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to operate as a contract or charter bus operator, Federal law now prohibits the seating of passengers based on the sex of a particular passenger. And for applicant to operate in charter service will require that an identifiably group act to charter one or more buses for the group with no sale of individual tickets involved. From the evidence now on the record the congregations of Monsey are not at the stage where such a charter operation would be possible, let alone be considered.

III

SPECIAL AND CHARTER OPERATIONS

It was clear from the application, filed by Monsey Transportation Corporation, and the record herein, that the parties (as well as the prospective passengers) contemplated that under a continuing contract or contracts with the Jewish congregations and Yeshivas of Monsey the carrier would provide transportation to and from New York City for individual members of each congregation as desired. Just how the individual traveler would pay for his transportation was unclear, but there was no indication that the separate congregations desired, intended, or were able each to charter a bus for the use of their members. The fairest inference is that the individual traveler would pay a pro rata share of the contract cost on a periodic basis.

In Fordham Bus Corp. Common Carrier Application, 29 M.C.C. 293, 297 (1941), the Commission clarified the distinction between "special" and "charter" operations as applied to motor

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carriers of passengers under part II of the Act:

[These terms] are frequently confused and sometimes erroneously used as virtually synonymous. It is clear, however, that, properly employed, each identifies a particular and distinct type of service. Charter service contemplates the transportation of groups, such as lodges, bands, athletic teams, schools, or other travel groups, assembled by someone other than the carrier, who collectively contract for the exclusive use of certain equipment for the duration of a particular trip or tour. Special service, on the other hand, contemplates that service rendered generally on week-ends, holidays, or other special occasions to a number of passengers which the carrier itself has assembled into a travel group through its own sales to each individual passengers of a ticket covering a particular trip or tour planned or arranged by the carrier. [Cases cited.]

In Michaud Bus Lines, Inc.--Extension--Tours, 100 M.C.C. 432, 443 (1966), the above definitional distinction was said to be "satisfactory where reference is made only to those special operations involving sightseeing and pleasure tours." But, the report in Michaud went on to say:

***special operations authority has been granted for the transportation of airline passengers in Woodrum Field Airport Lim. Service, Inc., Com. Car. Applic., 82 M.C.C. 647, and earlier ex-air passenger proceedings such as Teterboro Motor Transp., Inc., Com. Car. Applications, 47 M.C.C. 247; the transportation of workers to and from work in Prue Common Carrier Application, 31 M.C.C. 789; the transportation of cattle breeders to and from the stockyards in Myers Common Carrier Application, 89 M.C.C. 125; and the transportation of car owners in their own automobiles while being transported by a common carrier in drive-away service in Adams Common Carrier Application, 94 M.C.C. 290.

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The transportation here contemplated is not a pleasure tour or sightseeing service, and it is not any of the above categories of special operation, except that in some respects it resembles the type of operation described in Prue, supra. In the 1942 Prue case, the applicant operated a 5-passenger sedan and a 16-passenger bus, the bus being used for the regular shifts at certain mills in Rhode Island. Workers were picked up at their homes in various communities in Massachusetts and Rhode Island and then transported direct to the mills and returned to their homes at the end of the shift. The Commission found that:

***applicant performs special operations in non-scheduled door-to-door service limited to the transportation of mill workers to and from their places of employment. Such service fills a particular need, and is a special common-carrier service by motor vehicle subject to the certificate provisions of the act. (37 M.C.C. at 791)

It appears that the Review Board has likened the instant case to Prue, in that transportation of workers is involved in both. However, Prue was concerned with all workers wishing transportation from these home communities to the mills in Rhode Island; a typical common carrier situation where a holding out to the general public is involved. In the instant proceeding the general public is not involved, only a special religious segment of that public, making Prue and other cases inapposite on the facts available in the record. NBTA does not intend to imply that a proper record would not show that the Orthodox Jewish members of the congregations and Yeshivas in Monsey do

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constitute the general public of Monsey. NBTA submits only that such a showing has not been made, and the cases holding that special operations may be authorized are not in point.

As for the charter authority given to applicant, suffice it to say that the Monsey Transportation Corp. did not seek such authorization, it did not attempt to prove on the record a public need for such authority, and a gratuitous grant of charter authority by Review Board Number 2 was plainly erroneous. The term "charter service" was defined above in the quotation from Fordham Bus Corp. Common Carrier Application. Plainly, the service shown to be needed in the case at bar cannot be provided under any recognized interpretation of charter authority.

IV

CONTRACT CARRIAGE MAY BE AUTHORIZED

The Stay Decision and Order of the Review Board states:

***that if applicant were to enter into contracts for transportation services with each of these [32] organizations and performed operations thereunder, it could not be considered as engaging in transportation for a 'limited number of persons' as specified in the contract carrier definition of section 203(a)(15) of the Interstate Commerce Act.

NBTA respectfully submits that a holding that negates contract carriage solely on the basis of the supposed number of contracts to be executed by applicant takes an unduly narrow view of the matter, and disregards the facts.

In Armored Motor Service Co., Inc., Conversion Proceeding, 77 M.C.C. 433 (1958), Division 1 found that due to the specialized

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SEPTEMBER 20, 1976

nature of the service performed by the armored car carriers, the fact that they were serving from 7 to 314 shippers did not remove them from the category of contract carriers serving a limited number of shippers. This finding was differentiated and discussed further in Storch Trucking Company, Inc., Conversion Proceeding, 82 M.C.C. 777, 781 (1960), where it was said:

It was there [Armored Motor Service] held that 'a limited number of persons' as specified in the definition of a contract carrier does not necessarily mean an arbitrary figure which must be constant and not exceeded; but rather it is a figure determined after consideration of the factors and circumstances surrounding a particular operation or type of motor-carrier service. Some of the factors to be considered are the different types of commodities transported, the number of permits held by the carrier, the territory in which the operations are conducted, the degree of specialization required by the nature of the business of the shippers involved, and the degree of similarity in the services the carrier performs under its effective continuing contracts. [Emphasis supplied.]

In Storch, the carrier had 46 contracts and was negotiating new ones at the time the Commission instituted the proceeding to determine Storch's proper status as a contract carrier. The facts found were such as to cause Division 1 to find that the carrier was holding itself out to the general public and was intending to operate as a common carrier. However, the specialized nature of the service to be provided by Monsey Transportation Corp. to a class of persons; i.e., special provisions for religious activity aboard the bus while underway and for separate seating of men and women, could bring the instant application

NATIONAL BUS TRAFFIC ASSOCIATION PETITION FOR RECONSIDERATION
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well within the guidelines of Armored Motor Service and of the cases following that decision. For example, in S. Klein Trucking Corp. Contract Carrier Application, 89 M.C.C. 53, 56 (1962), the Commission stated:

In the unusual circumstances presented here, we believe that applicant's supporting shippers, being generally all of one 'class', may also be regarded as constituting a 'limited number of persons' within the meaning of section 203(a)(15)....

The S. Klein Trucking shippers consisted of the Klein Stores, its subsidiaries, and its concessionaires; these were "numerous entities" and "a considerably larger number than ordinarily served by a contract carrier...." 89 M.C.C. at 56.

The error of the review board in taking an unduly narrow view of section 203(a)(15) is further revealed by the discussions of two similar cases in Suburban Transit Corp. Contract Carrier Application, 106 M.C.C. 763, 772 (1968). There it was said:

The distinction [in the two cases] is that the groups in the Shores and Brown case..., were drawn for each trip from the public at large, whereas the groups in Shepherd were drawn from the membership of continuing associations themselves artificially narrowed by criteria related to their own purposes. Also the bare transportation in the Shepherd case,...was clearly incidental to the group participation in the trip. Much was also made in this report of applicant's [special experience] in the supervising and handling of young people.

While the organizations supporting the application in Shepherd numbered only four, they were charitable organizations, e.g.,

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the Providence Jewish Community Center, et al., with a special personalized transportation service required, much like that to be provided by the applicant herein. It may well be that on a reopened record the Monsey Orthodox Jewish congregations would show a similar organizational sponsor able to execute the appropriate contract with applicant. However, it is submitted, that by the holdings in Armored Motor Service and S. Klein Trucking, supra, the 32 congregations themselves may contract with applicant and yet not violate the "limited number of persons" criterion of section 203(a)(15).

CONCLUSION

The Stay Decision and Order of the Review Board reverses the cogent findings and conclusions of the Administrative Law Judge that the proposed operation will "necessarily retain the character of contract carriage and will be wholly irreconcilable with common carriage", due principally to the specialized nature of the service to be provided and irrespective of the number of the contracting organizations. The order of the Review Board, if left undisturbed, would allow a certificate of public convenience and necessity to be awarded to an applicant who: (1) may not wish to undertake the type of operation common carriage requires, or (2) has presented to the Commission a record supporting only the contract carriage application, and which is wholly deficient for a showing of public convenience and necessity.

NATIONAL BUS TRAFFIC ASSOCIATION PETITION FOR RECONSIDERATION
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NBTA's members believe that the record substantiates the grant of authority recommended by the Administrative Law Judge; that the limited number of persons to be served by applicant is well within the guidelines of the Armored Motor and S. Klein Trucking decisions; and that the Review Board's Stay Decision and Order should be reversed and the Initial Decision of the Administrative Law Judge should be reinstated and sustained. However, if the recommended grant of authority by the Administrative Law Judge is not to be adopted by the Commission, then NBTA strongly urges that the proceeding be reopened for further hearing so that the record may be properly and fully developed.

As noted earlier, NBTA does not take a position on the question of a grant of operating authority to the applicant as long as that is done with full knowledge and consideration of all pertinent facts. The withdrawal of protestants from participation at the hearing was predicated on limited scope of that application for contract carrier authority. Protestants and all other common carriers of passengers have been prejudiced by the action of the Review Board in its present form.

Wherefore, the National Bus Traffic Association requests that the Commission reverse the Stay Decision and Order in this proceeding, dated June 22, 1976 (served July 20, 1976), and

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that the Commission either reinstate and sustain the Initial Decision of the Administrative Law Judge or reopen the proceeding for further hearing.

Respectfully submitted,

NATIONAL BUS TRAFFIC ASSOCIATION

By Its Attorneys:

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John S. Fessenden

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DUE AND FILED: September 20, 1976

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 1976, a copy of the foregoing petition was served on all parties of record herein, by first class United States mail, postage prepaid.

Richard A. Ward

REPLY OF SEPTEMBER 28, 1976 of MONSEY TRANSPORTATION CORP.

Before the
INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-141113

MONSEY TRANSPORTATION CORP.,

RESPONSE TO PETITIONS
OF
NATIONAL BUS TRAFFIC ASSOCIATION

MONSEY TRANSPORTATION CORP., by its attorney
Harvey L. Strelzin, Esq., for its response to the petitions
of NATIONAL BUS TRAFFIC ASSOCIATION, respectfully states that
as will be demonstrated herein, there is no ground in fact
or in law for reconsideration or for leave to intervene as
requested by NATIONAL BUS TRAFFIC ASSOCIATION.

I.

The statement of facts and findings by the
Administrative Law Judge, affirmed and adopted by the Review
Board, wholly support the enlargement of the application to
one seeking authorization as a common carrier, but over

REPLY OF SEPTEMBER 28, 1976 of MONSEY TRANSPORTATION CORP.

irregular routes, instead of as a contract carrier. The finding by the Review Board that the "present and future public convenience and necessity require operation by Applicant of the service described in the Appendix" is equally supported by the record. This is so because the Appendix, in particularizing the routes and restricting the authorized service to members of the subject congregations and yeshivas, ipso facto limited the Applicant to the parameter of special and charter operations, thereby also removing the threat of impingement upon the service of any common carrier. Absent such a threat, absent any showing that the Review Board had mistaken or overlooked any material fact, absent any offer of newly discovered evidence sufficient to sustain a contrary result, the petitioner wholly fails to establish either that the decision and order are unsupported by the substantial evidence and the record, or that the result reached by the Review Board was arbitrary and capricious, or an abuse of discretion, or that the Review Board has exceeded its power and jurisdiction.

II.

The decision and order of the Review Board, contrary to the contentions of the petitioner, do not actually enlarge the scope of the authority granted to the Applicant, even though it will be denominated a common carrier. The

REPLY OF SEPTEMBER 28, 1976 of MONSEY TRANSPORTATION CORP.

record and evidence conclusively established, as recognized by the Review Board, that the Applicant did not seek authority to provide service to the general public. The authorization sought by Applicant was expressly limited to members, and no others, of Jewish orthodox congregations and yeshivas, between the points particularly specified in the route descriptions supplied by the Applicant, and particularized in the Appendix as the service authorized. It is clear from the decision of the Review Board that the modification of the application from that of a contract carrier to that of a common carrier, was solely responsive to the recognition of the fact that the number of such congregations and yeshivas might exceed the "limited number of persons" specified in the definition of a contract carrier contained in Sec. 203 (a) (15) of the Interstate Commerce Act. Therefore, to maintain definitional verity, the service proposed by the Applicant was more properly denominated that of a common carrier in the sound exercise of discretion. Further, the very limitations and restrictions imposed by the Appendix on the service authorized, conclusively eliminates the possibility as well as the probability that the Applicant could, without risking revocation of its permit, expand its service to that of an ordinary, regular common carrier, servicing the general public in competition with other common carriers similarly

REPLY OF SEPTEMBER 28, 1976 of MONSEY TRANSPORTATION CORP.

situated.

It is noteworthy that there is no offer of proof whatsoever that the Applicant in truth, as claimed, proposes to transport passengers other than those to whom it is restricted by the decision and order of the Review Board. Indeed, it is acknowledged that the Applicant's service in fact will be only a special operation. In the face of this admission, the objection to the Applicant's special operations is patently specious. Given the limitations and restrictions specified in the Appendix, even chartering by the Applicant is equally limited and restricted to the particularized routes and to members of Jewish orthodox congregations and yeshivas. Therefore, by extension, the petitioner cannot be heard to say that the decision and order of the Review Board unduly and improperly expands the authorization beyond what is sought or needed or what the record will justify. Thus, the objections of the petitioner are not based on the record, but are nothing more than a conjectural, hypothetical construct, having no relation to the actual facts, in an attempt to predict an event that cannot come to pass.

III.

The limitations and restrictions of the

REPLY OF SEPTEMBER 28, 1976 of MONSEY TRANSPORTATION CORP.

authorized service are plain and unambiguous. The only relevant frame of reference with respect to administration and enforcement, is spelled out literally and precisely. Whether passengers transported by the Applicant are or are not members of the subject Jewish orthodox congregations and yeshivas, and whether Applicant is or is not adhering to the specified routes, are readily ascertainable facts, capable of being readily policed and capable of readily applied regulatory sanctions in case of violation.

It is incomprehensible in logic and in law that because it is a nominal common carrier, Applicant will be obligated to serve the general public notwithstanding and in the face of the Appendix restrictions, just because the authority granted is that of common carriage. Such an argument substitutes shadow for substance, semantics for facts. Above all, the decision and order of the Review Board respond immediately to the record needs of the Applicant's riders, and are soundly based on reason and common sense, in light of the established facts.

CONCLUSION

Applicant respectfully submits that the petition of NATIONAL BUS TRAFFIC ASSOCIATION for leave to intervene

REPLY OF SEPTEMBER 28, 1976 of MONSEY TRANSPORTATION CORP.

and for reconsideration should and must be dismissed on the facts and the law.

Respectfully submitted,

MONSEY TRANSPORTATION CORP.

BY:

Harvey L. Strelzin
HARVEY L. STRELZIN, ESQ.
253 Broadway
New York, N. Y. 10007

Its Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing document upon the parties of record in this proceeding by mailing a copy thereof to each of them by first class mail, postage prepaid.

Dated at New York, New York, this

28 day of September, 1976.

Harvey L. Strelzin
HARVEY L. STRELZIN

PETITION OF HUDSON TRANSIT LINES, INC. FOR FINDINGS OF
ISSUES OF GENERAL TRANSPORTATION IMPORTANCE - Jan. 4, 1977

BEFORE THE
INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-141113

MONSEY TRANSPORTATION CORP.

PETITION OF HUDSON TRANSIT LINES, INC.
FOR FINDINGS OF ISSUES OF GENERAL
TRANSPORTATION IMPORTANCE

On May 10, 1976, an Administrative Law Judge after hearing testimony recommended a proposed grant of contract carriage wherein the applicant would enter into contracts with Jewish Orthodox Congregations located in the described Monsey area with the transportation restricted to members of said Congregations.

Thereafter, by Order dated June 22, 1976, Review Board No. 2 on the grounds that the application did not relate to a limited number of organizations or persons converted the contract carrier grant to common carrier in special or charter operations.

The area involved in this proceeding is a portion of the commuter district surrounding New York City. In short, on the basis of support submitted by members of a religious community for a service designed to meet their distinct needs, the Review Board here saw fit to convert the application to common carriage and authorized special and charter operations over and along the omnibus lines of protestant. The case is of such significance that the National Bus Traffic Association thereafter filed a petition for leave to intervene. On December 27, 1976, with

PETITION OF HUDSON TRANSIT LINES, INC. FOR FINDINGS OF ISSUES
OF GENERAL TRANSPORTATION IMPORTANCE, JANUARY 4, 1977

Commissioner MacFarland dissenting, Division I in an administratively final Order denied the petitions which had been filed by the involved parties to the prior Order.

I

Within the context of Shippers Truck Service, Inc. -19 States, 125 M.C.C. 329, may the Commission on the basis of racial and ethnic factors grant common as opposed to contract carriage when in fact the support for the application and the service proposed is geared to a separate and distinct community?

In short, Petitioner is asserting that on the basis of such a limited support from a distinct group within the commuter district, it is arbitrary and capricious to grant authority which would allow the applicant to serve all members of the general public including the general riding public which it is the obligation of protestant to serve as common carriers. Indeed, the applicant throughout has represented that it only desires to serve this limited group.

II

Within the representations of the applicant that it only seeks authority to serve these religious organizations and their members, was it not against national transportation policy for the Commission to disregard those cases where a specific class of shipper has been deemed to constitute contract carriage regardless of the number of contracts which might be included. Armored Motor Service, Inc., 73 M.C.C. 433; Crete Car Corp., 117 M.C.C. 634.

III

With regard to the national transportation policy, where is the line

**PETITION OF HUDSON TRANSIT LINES, INC. FOR FINDINGS OF ISSUES
OF GENERAL TRANSPORTATION IMPORTANCE, JANUARY 4, 1977**

to be drawn which allows common carrier authority to be granted in a contract carrier application on the basis of support confined to a single group?

IV

On what basis in fact or law can common carriage be granted when the applicant has repeatedly represented that the service will be made available only to members of its religious community and to no other members of the general public? The corruption of the national transportation policy by a grant of common carriage in the case at bar can only be understood in the context of the aforementioned question. The Commission is sanctioning by granting authority on the basis of such testimony an applicant embargoing other passenger transportation. Such a policy is contrary to common carriage and can only be found to be contract carriage. A common carrier has an obligation to serve the public as a whole and the applicant in advance has represented that it will not undertake such a general passenger bus service.

V

Protestant submits that this case presents issues of general transportation importance affecting the entire passenger transportation industry. To be sure, each and every group within our society could on the basis of the evidence here presented secure common carrier authority and thus destroy the existing network of regular route passenger carriers.

Respectfully submitted,

SAMUEL B. ZINDER, P.C.
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January 4, 1977

PETITION OF NBTA OF January 4, 1977 FOR RECONSIDERATION

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D. C.

In the Matter of:

Monsey Transportation Corp.
Contract Carrier Application

Docket No. MC-141113

PETITION -

1. FOR RECONSIDERATION OF ORDER DATED
DECEMBER 13, 1976;
2. FOR ACCEPTANCE OF PREVIOUSLY TENDERED
PETITION FOR RECONSIDERATION; AND
3. FOR STAY OF ORDER DATED DECEMBER 13, 1976

INTRODUCTION

The National Bus Traffic Association, Inc. (NBTA) respectfully seeks reconsideration of the order of December 13, 1976, denying NBTA's petition for leave to intervene in this proceeding and rejecting NBTA's previously tendered petition for reconsideration. Insofar as those two rulings are concerned, the order of December 13 is an initial order and is properly subject to reconsideration. Accordingly, NBTA respectfully prays that the order of December 13 be stayed until further order of the Commission following disposition of this petition.

PREFACE AND ARGUMENT

The grounds upon which reconsideration of the order of December 13 are requested is that NBTA's petition for leave to intervene was improperly denied and its previously tendered petition for reconsideration was improperly rejected.

PETITION OF NBTA OF JANUARY 4, 1977 FOR RECONSIDERATION

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In this proceeding the application sought a permit to conduct operations as a contract carrier of passengers by motor vehicle. After hearing, the Administrative Law Judge issued an initial decision granting the applicant a permit to operate as a contract carrier. No exceptions to the initial decision were filed, but the Commission stayed the initial decision on its own motion, reviewed the case, and issued a decision changing the grant of authority from contract carriage to common carriage. The stay decision and order dated June 22, 1976, explicitly recognized that the authority granted was broader than that originally sought and recommended by the Administrative Law Judge and, therefore, ordered that a notice of the grant of broadened authority be published in the Federal Register to permit parties having an interest in the case by virtue of the broadened authority to file an appropriate petition for leave to intervene.

Notice of the broadened authority granted in this case was published in the Federal Register for August 19, 1976, and NBTA's petition for leave to intervene was submitted within the 30 days allowed following that notice as provided in the stay decision and order of the Commission in this proceeding. In its petition for leave to intervene, NBTA explained that the grant of common carrier authority on a record showing only the desire of members of a particular religious group to have a transportation service adapted to the requirements of their religious beliefs raised a serious issue concerning the statutory standard of public convenience and necessity which was of importance to the intercity bus industry as a whole. Along with its petition for leave to intervene, NBTA tendered its petition for reconsideration of the stay decision and order in which it developed arguments on the issues presented by the broadening of the contract carrier authority sought by the applicant to common carrier authority.

PETITION OF NBTA OF January 4, 1977 FOR RECONSIDERATION

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The order of December 13, 1976, denied NBTA's petition for leave to intervene "for the reason that petitioner has not shown good cause for being permitted to intervene at this stage of the proceeding". The stated ground for denial of intervention by NBTA and thereby the ground for rejection of its petition for reconsideration is arbitrary, capricious and without rational basis.

Prior to the Commission decision broadening the authority sought in the case from contract to common, there was no issue of industry-wide importance. The action taken in the decision was on the Commission's own motion so that no party had any advance notice or inkling that the contract carrier authority sought by applicant and granted by the Administrative Law Judge would be converted to common carrier authority. The first such notice was the issuance of the stay decision and order itself. Inasmuch as that decision provided that notice would be published in the Federal Register and 30 days allowed following such publication for the submission of petitions for leave to intervene on behalf of parties whose first interest in the case arose by virtue of the action taken in the stay decision and order, NBTA submitted its petition for leave to intervene on a timely basis in full compliance with the Commission's rules and procedures. It is nonsensical for the Commission to now deny that petition on the claimed ground that NBTA failed to show good cause for intervention "at this stage of the proceeding". This was the first stage of the proceeding in which NBTA had any proper interest and it asserted that interest promptly in response to the Commission's notice of action taken by the Commission on the Commission's own motion.

*/ This is stock language meaning that a party failed to assert its interest at the proper time. Clearly, it cannot be applied to NBTA in this case.

PETITION OF NBTA OF January 4, 1977 FOR RECONSIDERATION

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REQUEST FOR ACCEPTANCE OF
PREVIOUSLY TENDERED
PETITION FOR RECONSIDERATION

The order of December 13 rejects NBTA's previously tendered petition for reconsideration and, therefore, it appears that the disposition of the case made by the order was without consideration of NBTA's petition. Therefore, NBTA respectfully asks the Commission to accept its previously tendered petition and to consider its argument on the merits. The principles involved are most important to the integrity of motor carrier regulation and should not be either ignored or lightly decided.

REQUEST FOR STAY

The order of December 13, 1976, provides that it shall be effective 15 days from the date of service, which was December 27, 1976. In light of the clearly demonstrated error on the part of the Commission in denying NBTA's petition for leave to intervene and in rejecting its previously tendered petition for reconsideration, NBTA respectfully prays that the order of December 13, 1976, be stayed pending disposition of this petition and, in the event that this petition is granted, be further stayed pending consideration and disposition of NBTA's previously tendered petition for reconsideration.

NATIONAL BUS TRAFFIC ASSOCIATION, INC.

By Its Attorneys:

OF COUNSEL:

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John S. Fessenden
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FILED: January 4, 1977

PETITION OF NBTA OF January 4, 1977 FOR RECONSIDERATION

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 1977, copies of the foregoing petition were served on all parties of record in this proceeding.

John S. Fessenden

REPLY OF JANUARY 13, 1977 OF MONSEY TRANSPORTATION CORP.

Before the
INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC-141113

MONSEY TRANSPORTATION CORP.,

Applicant

RESPONSE TO PETITIONS
FOR RECONSIDERATION
OF
NATIONAL BUS TRAFFIC ASSOCIATION, INC.
and HUDSON TRANSIT LINES, INC.

MONSEY TRANSPORTATION CORP., Applicant, by
its attorney Harvey L. Strelzin, Esq., for its response
to the petitions for reconsideration of NATIONAL BUS
TRAFFIC ASSOCIATION, INC., and HUDSON TRANSIT LINES, INC.,
respectfully states that as will be demonstrated herein,
there is no ground in fact or in law for reconsideration
of the order dated December 13, 1976 made by Division 1,
acting as an Appellate Division.

REPLY OF JANUARY 13, 1977 OF MONSEY TRANSPORTATION CORP.

I.

At the inception of the application, notice thereof was published. Thereafter, notice was again published pursuant to the order dated April 30, 1976, of the Administrative Law Judge, and once more published pursuant to the order dated June 22, 1976, of Review Board Number 2.

NATIONAL BUS TRAFFIC ASSOCIATION first filed a petition for leave to intervene and a petition for reconsideration on September 20, 1976, when the application had already been twice reviewed at the appellate stage.

The time for NATIONAL BUS TRAFFIC ASSOCIATION to intervene, if it was so disposed, was in response to the first publication. It failed to do so. Hence, the order dated December 13, 1976 by Division 1, acting as an Appellate Division, not being an "initial order", but the result of final review, it is not subject to reconsideration now at the belated instance of NATIONAL BUS TRAFFIC ASSOCIATION, which has no standing herein because of its failure to act timely.

II.

In any event, neither the petition of

REPLY OF JANUARY 13, 1977 OF MONSEY TRANSPORTATION CORP.

NATIONAL BUS TRAFFIC ASSOCIATION nor that of HUDSON TRANSIT LINES, INC. warrants reconsideration of the December 13, 1976 order. Nothing is shown by either petition to establish that Division 1 overlooked or mistook a material fact in its review of the entire record, or that the findings of fact were contrary to the evidence. Indeed, both petitions concede the facts to be as found, and ask reconsiderations only because the petitioners are of a different opinion than that of Division 1.

III.

Both petitions raise the same ostensible objection, namely, that the order of December 13, 1976 singles out a special group for preferential treatment as a kind of "reverse discrimination" against the public at large and all other common carriers in particular. This, they argue, subverts "national transportation policy" and the "statutory standard of public convenience and necessity."

The fallacy of said argument is transparent.

FIRST, it stubbornly ignores the findings of

REPLY OF JANUARY 13, 1977 of MONSEY TRANSPORTATION CORP.

the Administrative Law Judge, affirmed by Review Board Number 2 and by Division 1, that present and future public convenience and necessity require operation by applicant of the service described in the appendix to the order of June 22, 1976.

SECOND, it assumes that common carriers may roam at will over any routes in any territory, whereas every interstate carrier is limited to the routes, territories and mode of operation authorized by the Commission, regardless whether the service is designated as that of common carriage or contract carriage.

THIRD, it stubbornly ignores the limitations and restrictions explicitly delineated in the Appendix to the order of June 22, 1976.

FOURTH, it refuses to recognize that the sum of the regulatory powers of the Commission is equal to its parts, so that the power to authorize special and charter operations over an irregular route, is inherent in the power of the Commission to authorize common carriage in the instant proceeding in order to serve the necessity and convenience of the religious group involved as an element of the public whose sum also is equal to its parts.

REPLY OF JANUARY 13, 1977 of MONSEY TRANSPORTATION CORP.

FIFTH, it attempts to transmogrify the purpose of the regulatory powers of the Commission into a design for the restriction of competition, whether real or imagined, irrespective of the needs and convenience of a particular segment of the public, even though, as found by the Administrative Law Judge, and affirmed on review, the practices of said segment of the public are "...so incompatible with common carriage and with the normal bus operations of existing carriers that such carriers have declined to provide such a service, forcing hundreds of inhabitants of Monsey to resort to extraordinary measures to get to and from work."

CONCLUSION

For all the foregoing reasons, and those stated in applicant's replies to the prior petitions of NATIONAL BUS TRAFFIC ASSOCIATION and HUDSON TRANSIT LINES, hereby made part hereof as if fully set forth, the instant petitions for reconsideration of the order of December 13, 1976 by Division 1 should and must be denied.

Respectfully submitted,

MONSEY TRANSPORTATION CORP.

BY:

Harvey L. Strelzin
HARVEY L. STRELZIN, ESQ.

253 Broadway

New York, N. Y. 10007

Tel.: (212) 233-0763

Its Attorney

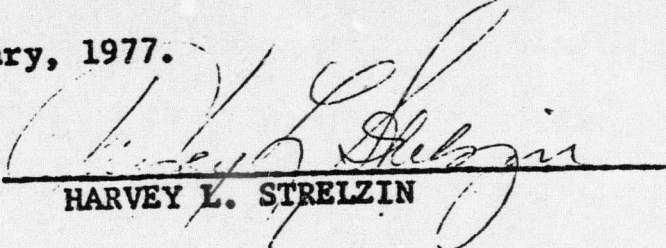
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REPLY OF JANUARY 13, 1977 of MONSEY TRANSPORTATION CORP. CORP.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing document upon the parties of record in this proceeding by mailing a copy thereof to each of them by first class mail, postage prepaid.

Dated at New York, New York,
this 13th day of January, 1977.


HARVEY L. STRELZIN

TRANSCRIPT
OPENING DISCUSSION & COMMENTS

BEFORE THE INTERSTATE COMMERCE COMMISSION

-----X

In the Matter of: :

MONSEY TRANSPORTATION CORP. : MC # 141113
94 WASHINGTON AVENUE, NEW SQUARE,
SPRING VALLEY, NEW YORK 10977 :

-----X

26 Federal Plaza
Federal Building
New York, New York
April 20, 1976

The above-entitled matter came on for hearing
at 9:30 o'clock A.M.

BEFORE:

J. LEE BENICE, Administrative Law Judge

APPEARANCES:

HARVEY L. STRELZIN, ESQ.,
Attorney for Applicant
253 Broadway
New York, New York 10007

S.S. EISEN, ESQ.,
Attorney for Protestant Rockland Coaches, Inc.
370 Lexington Avenue
New York, New York

FRANK J. FITZSIMMONS, ESQ.,
Attorney for Protestant Transport of New Jersey
180 Boyden Avenue
Maplewood, New Jersey

SAMUEL B. ZINDER, ESQ.,
Attorney for Protestant Hudson Transit Lines, Inc.
98 Cutter Mill Road
Great Neck, New York 11021

TRANSCRIPT - OPENING DISCUSSION & COMMENTS

o

I N D E X

WITNESSES

DIRECT

Cnaim Lurger	9
Ronald Greenwald	20
Jacob Bookson	27
Abraham Joseph	29
Moshe Wosner	33

E X H I B I T S

EXHIBITS

FOR IDENT.

IN EVIDENCE

1	5	
2	10	
3	11	
2 and 3		20

ooo

TRANSCRIPT - OPENING DISCUSSION & COMMENTS

P R O C E E D I N G S

JUDGE BENICE: The hearing will come to order.

This is the time and place set by the Interstate Commerce Commission for hearing in number MC-141113, the application of Monsey Transportation Corporation.

This proceeding was originally referred to Joint Board Number 3, but the Board has failed to appear, and so pursuant to the orders setting this matter for hearing the proceeding will be heard by me.

I am Administrative Law Judge J. Lee Benice.

Who appears for the applicant?

MR. STRELZIN: For the applicant Harvey L. Strelzin,
S-t-r-e-l-z-i-n.

My office is at 253 Broadway in New York -- in
Manhattan.

JUDGE BENICE: You're an attorney licensed to practice?

MR. STRELZIN: I am.

JUDGE BENICE: Who appears for Protestant?

MR. EISEN: My name is S.S. Eisen, E-i-s-e-n, 370
Lexington Avenue, New York City, 100017.

I appear on behalf of Rockland Coaches Inc., a
protestant.

I am an attorney admitted to practice before this
Commission.

MR. FITZSIMMONS: Frank J. Fitzsimmons, representing

TRANSCRIPT - OPENING DISCUSSION & COMMENTS

1 protestant Transport of New Jersey.

2 My address is 180 Boyden Avenue, Maplewood, New
3 Jersey.

4 I am an attorney admitted to practice before the
5 Interstate Commerce Commission.

6 MR.ZINDER: May it please the Examiner, my name is
7 Samuel Zinder, 98 Cutter Mill Road, Great Neck, New York
8 11021.

9 I appear on behalf of Hudson Transit Lines, Inc.,
10 protestant.

11 I am an attorney admitted to practice before the
12 Commission.

13 JUDGE BENICE: Are there any other appearances?

14 (No response.)

15 JUDGE BENICE: Any preliminary matters?

16 MR.EISEN: Yes, Your Honor.

17 Because the application as phrased, Your Honor, was
18 somewhat confusing in that it asked for both contract
19 carrier rights over regular routes, it appeared to ask
20 for special operations and also charter operations
21 presumably over regular routes, because the regular
22 routes indicated did not appear to be feasibly optional,
23 and also because there seemed to be some confusion
24 whether the routes were two way or one way routes,
25 we discussed the entire matter with the applicant's

TRANSCRIPT - OPENING DISCUSSION & COMMENTS

1 counsel this morning, and ascertained that maybe the
2 application was not drawn as specifically as it should
3 have been.

4 And as a result of our discussions we have ascer-
5 tained specifically what authority the applicant seeks.

6 Now, we have reduced it to writing, Your Honor,
7 but before I read it into the record, I should like to
8 say that it's fully encompassed in what the applicant
9 sought.

10 He sought everything, I guess, and it's fully
11 within the scope of what the applicant sought, so it's
12 really no enlargement of the territorial or operational
13 scope, and I think its acceptance by the Commission might
14 precipitate the withdrawal of the Protestant's in this
15 case.

16 And with Your Honor's permission I should now like
17 to read the authority sought as Applicant's counsel and
18 the Protestants have agreed to.

19 JUDGE BENICE: I believe you have it written down.

20 Could we first identify that, the written amend-
21 ment as Exhibit 1.

(Whereupon, the above-described
document was marked as
Exhibit 1 for identification.)

22
23
24 JUDGE BENICE: If you want to read it --

25 MR. STRELZIN: May we refer to that as Applicant's

TRANSCRIPT - OPENING DISCUSSION & COMMENTS

1 Exhibit 1 because it acceptable to us as well?

2 JUDGE BENICE: All right.

3 We will refer to it that way.

4 MR. EISEN: I should like to read it, Your Honor,
5 because in writing, I had about eight people around my
6 shoulders and everybody was giving us ideas and we had
7 to cross and recross and I am not very proud of the hand-
8 writing, so --- so I'd better read it.

9 Authority is sought to operate as a contract carrier
10 by motor vehicle, over irregular routes, transporting
11 passengers and their baggage in the same vehicle with
12 passengers between that area in Monsey, New York
13 bounded on the north by Viola Road; on the east by State
14 Highway 306 from Viola Road to Kearsing Parkway, to
15 the western boundary of the Village of Spring Valley;
16 on the south by State Highway 59; and on the west by
17 College Road on the one hand, and, on the other, one,
18 46th-47th Streets and Sixth Avenue, Manhattan, New York,
19 two, 34th Sbreet and Fifth Avenue, Manhattan, New York,
20 three, Broadway and Houston Street, Manhattan, New York,
21 four, Lee Avenue and Rodney Street, Brooklyn, five, 49th
22 Street and 13th Avenue, Brooklyn, New York under contin-
23 uing contracts with Jewish Orthodox congregations and
24 Yeshivas located in the described Monsey area; with
25 transportation restricted to members of said congregations

TRANSCRIPT - OPENING DISCUSSION
& COMMENTS

and Yeshivas.

JUDGE BENICE: Off the record a moment.

(Discussion off the record.)

JUDGE BENICE: On the record.

MR. STRELZIN: Your Honor, may I indicated, for the record, that the stipulation as read into the record by Mr. S.S. Eisen is agreeable to the applicant and in complete conformity with our understanding.

MR. EISEN: I understand, Your Honor, that if Your Honor accepts the description as amended -- as an amended application, that the protestants may very well withdraw.

JUDGE BENICE: Well, I do accept it.

So the amendment is accepted.

MR. EISEN: In view of the fact, Your Honor, may I ask permission to withdraw the opposition of Rockland Coaches, Inc. and otherwise asked to be excused from continued participation in the proceeding.

JUDGE BENICE: Very well, you are excused.

MR. FITZSIMMONS: If it pleases Your Honor, if this restriction and amended application is accepted by the Interstate Commerce Commission, then the interest of Transport of New Jersey will be protected, and at this time we would also like permission to withdraw from the hearing.

JUDGE BENICE: All right.

Permission is granted.

TRANSCRIPT - OPENING DISCUSSION & COMMENTS

1 MR. ZINDER: Your Honor, as counsel for Hudson
2 Transit Lines, Inc., which company holds authority
3 to operate from New York, New York, to points in
4 Rockland County, regular routes, and charter and special
5 operations, in view of the amendment, I respectfully
6 request permission to withdraw the protest of Hudson
7 Transit Lines or we desire to remain a party of record,
8 receiving all notices and I request your permission
9 to be excused.

10 MR. EISEN: I assume everyone remains a party of record
11 for the purposes of notification?

12 JUDGE BENICE: Oh, yes.

13 MR. ZINDER: Thank you.

14 JUDGE BENICE: Off the record.

15 (Discussion off the record.)

16 JUDGE BENICE: Back on the record.

17 MR. STRELZIN: With Your Honor's approval, may
18 I call the president of the applicant corporation,
19 Chaim Lunger.

20 Will you take the stand.

21 Whereupon,

22 CHAIM LUNGER

23 was duly sworn and testified as follows:

24 JUDGE BENICE: Will you be seated.

25 DIRECT EXAMINATION

DIRECT EXAMINATION OF WITNESS CHAIM LUNGER

1 Q (By Mr. Strelzin) Mr. Lunger, what is your full
2 name?

3 A Chaim Lunger. C-h-a-i-m, L-u-n-g-e-r.

4 JUDGE BENICE: Let me get that again.

5 THE WITNESS: Chaim Lunger, L-u-n-g-e-r.

6 JUDGE BENICE: L-u-n-g-e-r.

7 A Address, 94 Washington Avenue, New Square, Spring
8 Valley, New York.

9 Q (By Mr. Strelzin) Chaim Lunger, are you the
10 president of the Monsey Transportation Corporation?

11 A That's correct.

12 Q And are you a stockholder of the Monsey Transportation
13 Corporation?

14 A Yes.

15 Q Are there any stockholders besides yourself?

16 A My wife, Feige Lungerr.

17 Q How do you spell F-e-i-g-e?

18 A Yes.

19 Q Does she also live at 94 Washington Avenue, New
20 Square, Spring Valley, New York.

21 A Correct.

22 Q Are you and your wife the sole stockholders and
23 officers of the corporation?

24 A Yes.

25 Q I show you a copy of a certificate of incorporation

DIRECT EXAMINATION OF WITNESS CHAIM LUNGER

1 and ask you whether that was filed pursuant to the
2 laws of the State of New York on February 20th, 1975?

3 (Hanging.)

4 A Yes, sir.

5 MR. STRELZIN: May I show this to Your Honor and
6 may I have it marked -- it deemed marked in evidence?

7 JUDGE BENICE: All right.

8 This will be identified as Exhibit 2.

9 Prior to receiving it in evidence we will take
10 care of that after the testimony.

11 Q (By Mr. Strelzin) What business are you in, Mr.
12 Lungers?

13 A Monsey Bus --

14 Q Please tell me now what business are you in?

15 A I am -- been driving for congregation, the name
16 Bnai Moshe.

17 Q Is that up in Rockland County?

18 A That's in Rockland County.

19 (Whereupon, the above-described
20 document was marked as
Exhibit 2 for identification.)

21 Q Are you licensed to drive?

22 A Yes, I am licensed to drive.

23 Q Are you licensed to drive as a bus driver and
24 chauffeur?

25 A Yes, I am licensed for bus driver.

DIRECT EXAMINATION OF WITNESS CHAIRMAN LUNGER

1 Q How long are you so licensed?

2 A I have been licensed for the past nine years.

3 Q In the past nine years have you driven buses?

4 A Yes.

5 I have driven buses.

6 Q Yes or no?

7 Please don't repeat my questions.

8 A Yes.

9 JUDGE BENICE: Off the record.

10 (Discussion off the record.)

11 JUDGE BENICE: On the record.

12 Q (By Mr. Strelzin) In -- withdrawn.

13 I show you this statement of a certified public
14 accountant Jerald S. Eisenberger, dated May 20th, 1975,
15 a financial statement of the Monsey Transportation
16 Corporation, and ask you if your present financial economic
17 situation is the same today as it was at the time that
18 statement was prepared?

19 (Hanging.)

20 A Yes, it is.

21 MR. STRELZIN: I offer it in evidence, Your Honor.

22 JUDGE BENICE: All right.

23 That will be identified as Exhibit 3.

24 (Whereupon, the above-described
25 document was marked as
Exhibit 3 for identification.)

DIRECT EXAMINATION OF WITNESS CHAIM LUNGER

1 MR. STRELZIN: Your Honor, is it necessary to put
2 into the record the finances as contained in the
3 statement or is it sufficient to make reference to it?

4 JUDGE BENICE: I am not sure what you mean.

5 Let's go off the record.

6 (Discussion off the record.)

7 JUDGE BENICE: On the record.

8 Q (By Mr. Strelzin) In any event, Mr. Lunger, you show
9 a worth of approximately 88 thousand dollars, that includes
10 your equipment and money in the bank?

11 A Right.

12 Q Now, how long have you lived in Monsey, New York?

13 A I live up there for the last 16 years.

14 Q And are you acquainted with the make up of the
15 community, its religious make up?

16 A Yes.

17 Q Will you describe the kind of religious community
18 it is, to the best of your knowledge?

19 A What you mean by describe?

20 Q Will you tell me whether there are Orthodox families
21 living within Monsey?

22 A Yes.

23 Q And is it a community that's been established by
24 these Orthodox people?

25 A Yes.

DIRECT EXAMINATION OF WITNESS CHAIM LUNGER

1 This communities are there for the last 20 years,
2 and has some particular people, they have a lot of
3 Yeshivas there where they study for the last 20 years
4 and most of them have no car.

5 Q Now, are they all religious people up there?

6 A Yes.

7 Q That are a part of this sect?

8 A Yes, they are.

9 Q Do you know how many synagogues you have in that
10 area?

11 Are there a goodly number of synagogues?

12 A Yes.

13 Q Are there a goodly number of parochial schools or
14 Yeshivas in the community?

15 A Yes.

16 Q These people, the bulk of these people that work,
17 do they work elsewhere than in Monsey?

18 A They work elsewhere, in New York City.

19 Q Do they work in the City of New York, and in
20 Brooklyn, New York?

21 A Yes.

22 Q Now, can you tell me at the present time how these
23 people travel to work in the morning?

24 A Well, most of the people, they have now different
25 congregation buses that they will travel into New York
 City.

DIRECT EXAMINATION OF WITNESS CHAIM LUNGER

1 Also by car pools.

2 And they also have minibuses, like vans.

3 Q What is it you intend to do in the event your
4 application is approved?

5 What are you seeking?

6 A We are seeking to make from all of this car pools
7 and little vans and congregation buses, we would like
8 to have one bus company that will serve this community.

9 Q And have you discussed it -- with the officers of
10 the various religious organizations the fact that you
11 will be in the position in the event you are approved
12 to service them?

13 A Yes.

14 Q Are they prepared to enter into contracts with you
15 to serve the membership of these congregations and
16 Yeshivas?

17 A Yes.

18 Q Now, is there a need for your service in your
19 opinion?

20 A Yes.

21 Q And are you in a position both financially and
22 knowledge wise to supply this service for the community?

23 A Yes, I am.

24 Q Now, these buses that you intend to operate, will
25 they be maintained properly, do you know?

DIRECT EXAMINATION OF WITNESS CHAIRMAN LUNGER

1 A They will be maintained and they will be maintained
2 at Gray Boulevard Auto Repair.

3 Q How about drivers, how do you intend to secure
4 drivers for these buses?

5 A Well, we will check that all of these drivers
6 will have experience in bus driving and they will also
7 have chauffeur's class too.

8 Q And will you be interested and will you be securing
9 for each driver a medical examination to make sure that
10 he is physically and emotionally, mentally qualified
11 to drive these people?

12 A Yes.

13 Q And of course, it will be your function to see
14 that they are acquainted with the safety rules of the
15 road and the requirements of the people?

16 A Yes.

17 JUDGE BENICE: Off the record.

18 (Discussion off the record.)

19 JUDGE BENICE: On the record.

20 Q (By Mr. Strelzin) Mr. Lunger, the Orthodox people
21 that are going to come on to your bus from the -- from
22 this Orthodox community, just how are you servicing them
23 that's different?

24 A They have been sitting, the man and women, the
25 women on one side, the men on one side.

DIRECT EXAMINATION OF WITNESS CHAIM LUNGER

1 Also the women will starting sitting from, they
2 start sitting from the fourth or fifth seat boards the
3 back.

4 Q In other words, you separate the man and the
5 women on the bus?

6 A Yes.

7 Q Do you have facilities available for prayer on
8 the bus?

9 A Yes.

10 We do.

11 We have certain seats that people can pray and
12 another one study with each other, that's okay.

13 Q Now, once you pick up the members of these congre-
14 gations within the area outlined in the stipulation of
15 settlement, do you pick them up on the road at all?

16 A No, not at all.

17 Q And there is no intermittant stop until you leave
18 them off in Manhattan and in Brooklyn?

19 A Right.

20 MR. STRELZIN: I have no other questions, Your
21 Honor, of this witness.

22 JUDGE BENICE: All right.

23 I may have a few.

24 Just a moment.

25 Q (By Judge Benice) Mr. Lunger, would you say --

DIRECT EXAMINATION OF WITNESS CHAIM LUNGER

1 when you say that the -- would you say that the Monsey
2 community is predominantly made up of Chassidic Jews?

3 A Yes.

4 Q Now, in the -- in the operation you plan to conduct
5 here, this will be a round trip operation?

6 A Yes.

7 Q Carrying essentially the same people in both
8 directions?

9 A Right.

10 It would be the members and their families back
11 and forth.

12 Q And would you expect a fairly consistent level of
13 ridership from day-to-day -- the operation may grow
14 or may not -- but would you expect Monday, Tuesday,
15 Wednesday to run roughly the same?

16 A Yes.

17 Roughly the same besides Sunday.

18 Q Do I understand it's your intention to generate
19 a contract with the various congregations?

20 A Yes.

21 Q I am not sure whether you actually said this or
22 not, but roughly how many congregations, different
23 congregations would you estimate there are in the Monsey
24 community?

25 MR. STRELZIN: I have the exact information with
another witness.

DIRECT EXAMINATION OF WITNESS CHAIM LUNGER

1 Q I would accept from you just a very wild estimate
2 to give us some idea of the magnitude?

3 A Approximately 32.

4 Q And could we say that new synagogues or Yeshivas
5 form from time to time?

6 A Yes.

7 Q And tell me about the sizes of the synagogues, how
8 large are the smallest ones?

9 A Usually they are about --

10 Q Smallest congregation?

11 A I should be anywhere from about 20 by --

12 MR. STRELZIN: Not the size, the number of people.

13 A It should be the smallest, should be about at least
14 30 people.

15 Q I see.

16 JUDGE BENICE: That's all the questions I have.

17 MR. STRELZIN: May I go into one or two additional
18 questions.

19 JUDGE BENICE: Go ahead.

20 Q (By Mr. Strelzin) Mr. Lunger, is it your intention
21 to pick up and to perform your service on Sabbath?

22 A No.

23 Q Now, on a Friday, just before the Sabbath, how is
24 your operation performed?

25 A Well, according to the -- when we light the candles --

DIRECT EXAMINATION OF WITNESS CHAIM LUNGER

1 Q Tell me what you do with your buses?

2 When do you start out on a Friday, when must you
3 be back on a Friday?

4 A Well, in the morning we will start at the same time
5 as usual, and in the afternoon we will come back --

6 Q Several hours before sundown?

7 A Several hours before the sundown, right.

8 JUDGE BENICE: Other days of the week, what time
9 do you start back in the afternoon?

10 THE WITNESS: We would -- well actually we have
11 one now that been going about 8 o'clock and we will
12 probably have 7,8,9, 7:30, according to what the need
13 will be.

14 JUDGE BENICE: P.M.?

15 THE WITNESS: Right.

16 JUDGE BENICE: Except on Friday?

17 THE WITNESS: Except on Friday.

18 A.M., sorry.

19 JUDGE BENICE: It's a return that's distinctive
20 about this operation?

21 THE WITNESS: Right.

22 Q (By Mr. Strelzin) Now, when will you get back on
23 the weekdays?

24 A On the weekdays we will be coming back, we will
25 start probably from 3 o'clock, 3, 4, 5, 6, this
hours.

DIRECT EXAMINATION OF WITNESS RONALD GREENWALD

1 MR. STRELZIN: I see.

2 No other questions.

3 Thank you very much, Mr. Lunger.

4 (Witness excused.)

5 MR. STRELZIN: May I proceed with the next witness
6 or does Your Honor want a recess?

7 JUDGE BENICE: Mr. Lunger, you will be available
8 for the rest of the hearing if we need you?

9 MR. LUNGER: Yes, sir.

10 JUDGE STRELZIN: Exhibits 2 and 3 are received in
11 evidence.

12 (Whereupon, Exhibit 2 and
13 3 were received in evidence.)

14 Whereupon,

15 RONALD GREENWALD

16 was duly sworn and testified as follows:

17 THE WITNESS: Ronald Greenwald.

18 DIRECT EXAMINATION

19 Q (By Mr. Strelzin) What is your address, sir?

20 A 13 Francis Place, Monsey, New York 10952.

21 Q How long have you been living there, Mr. Greenwald?

22 A Seven years.

23 Q What business are you in, sir?

24 A I am a job training specialist for the federal
25 government.

DIRECT EXAMINATION OF WITNESS RONALD GREENWALD

1 Q How long have you been in that business?

2 A Three years.

3 Q And prior thereto what was your business, sir?

4 A I worked for the Federation of Jewish Felontlo (phonetic)
5 Peace at a camp as director for 14 years.

6 Q Now, sir, are you acquainted with the area known
7 as Monsey, New York?

8 A Yes, I am.

9 Q Will you describe for His Honor the area, please?

10 A Monsey, New York, is a community approximately 22
11 miles from the heart of New York City.

12 Most of the inhabitants in Monsey are Jews that
13 left Brooklyn and the Bronx to settle in the suburban
14 type community.

15 I would say that there are close to 25 hundred
16 Orthodox families, and the average Orthodox family
17 has a birth rate of approximately 4.5 in Monsey,
18 which is triple the United States level.

19 Most of the people in Monsey still maintain their
20 jobs in New York.

21 Rockland County has not been able to produce
22 or provide the kinds of jobs that the Jews in Monsey
23 need, so therefore, commuting to New York is a necessity
24 of life.

25 JUDGE BENICE: Would you explain what you mean by the

DIRECT EXAMINATION OF WITNESS RONALD GREENWALD
kind of jobs they need?

THE WITNESS: Well, Chassidic Jews, particularly because of a basic religious belief have not attended colleges, doesn't have the professional skills that some other people might have.

Therefore, they are restricted to the trades, and the trades would be considered as the sweater industry, the diamond industry, or small peddling firms.

Naturally these businesses, particularly the diamond industry, is in Manhattan, and --- which is one of the stops that we anticipate.

But most of the other Jews work along Broadway in the needles and trades business.

I might add that in Monsey there are many non Chassidic Jews that are Orthodox that have the same religious beliefs as the Chassidic Jews, still would like to maintain separate seating on the bus.

So despite the fact that some of the Jews do not have Chassidic garb, their interests are the same as the Chassidic Jews, and the need to travel to New York and observe the restrictions of the Sabbath by coming in early are imperative on all of us whether we are Chassidic or not.

Q Now, at the present time, how do you travel?

How are the Orthodox Jews travelling from Monsey to New York?

DIRECT EXAMINATION OF WITNESS RONALD GREENWALD

1 A If I can use the colloquial term, a hassle, that's
2 probably what it is.

3 To get into New York by car is almost interminable
4 experience both in time and in question of parking.

5 We usually arrange car pools.

6 That's one means.

7 We go with these little buses from the various
8 congregations, and that becomes a difficult problem
9 because they can't go through the bus lines.

10 So we have to spend another 20 or 25 minutes on
11 the highway where the other buses normally would
12 travel right through.

13 I think it's important to note we cannot use the
14 regular bus companies in the Rockland area because
15 none of them come to Monsey.

16 They are all within two or three miles from Monsey,
17 so naturally we take cabs and other kinds of car pooling
18 to get to the other buses.

19 So I would say that it's difficult to get to
20 New York, but we make it everyday.

21 Q Is it your opinion that there is a need for the
22 services that's requested by Monsey Transportation?

23 A In my opinion not only is there a need but it
24 will provide the necessary jobs for many unemployed
25 Jews in Monsey, that can't find employment in Rockland

DIRECT EXAMINATION OF WITNESS RONALD GREENWALD

1 County.

2 This bus service will encourage people to go back
3 to the city and find employment.

4 Q In your opinion, will Monsey Transportation be
5 in a position if it's granted the application which it
6 seeks, the approval which it seeks of its application,
7 to serve the Orthodox Jews in the manner required?

8 A Well, the little experience our congregation, and
9 I am a member of congregation Beis, Jewish Yitzchock,
10 we have with Chaim Lunger, the attendant bus transport
11 applicant, he's always been very sensitive to the particular
12 needs of our congregants.

13 He's understanding in terms of the religious significance,
14 the times that we have to meet, when we can pray on the
15 bus or leaving after a certain prayer.

16 It's my belief that the applicant would be the
17 perfect kind of individual to serve the needs of Monsey
18 community.

19 Q Now, how are the men and women to be separated
20 on these buses?

21 A Curiously enough it's not by order but rather
22 by design.

23 Most of the people because of their religious
24 beliefs in a natural manner automatically the women
25 would take their seats and the men in their own manner.

DIRECT EXAMINATION OF WITNESS ROAND GREENWALD

1 There's no need to tell anyone to move somewhere.

2 It's a feeling, it's an understanding.

3 It's a community where everybody senses their
4 own religious responsibility and obligation.

5 But automatically the women take seats and the men
6 take their own seats.

7 And in no way is this to be construed as a
8 inferior position for the women.

9 Q In other words, you saying -- you are saying it's
10 a religious custom?

11 A It's a religious custom, with deep respect for both
12 male and female participants.

13 MR. STRELZIN: I have no other questions, Your Honor,
14 of this witness.

15 JUDGE BENICE: Just a moment.

16 Mr. Lunger, himself, is an Orthodox Jew?

17 THE WITNESS: Yes, he is.

18 Q (By Judge Benice) Let me ask you about the number
19 and size of the Chassidic and perhaps other Orthodox
20 Jewish congregations?

21 A Monsey, at this moment had 32 congregations.

22 A congregation in essence is a meeting place where
23 a quorum of ten Jews --

24 MR. STRELZIN: Male.

25 A Male Jews meet to pray.

DIRECT EXAMINATION OF WITNESS RONALD GREENWALD

1 So if a Rabbi has a basement or any kind of
2 property where ten Jews get together and pray, that
3 would be constituted as a congregation.

4 So technically it can be as little as ten male
5 Jews or the largest congregation in Monsey, which has
6 I believe 250 Jews, the Community Synagogue in Monsey.

7 So the 32 hundred -- 23 hundred Jewish families
8 are separated among 32 congregations, so your average
9 congregation is 40 or 50.

10 Q Are new congregations forming?

11 A I would say that generally there's an influx
12 of Jews and as Jews move into neighborhoods, the need
13 for greater and more institutions are increased.

14 I will say that -- at the rate of three or four
15 per year, at a minimum, institutions are formed in
16 Monsey.

17 Q All right.

18 When new ones are formed, what size would they be?

19 A They would again -- again a congregation must
20 have at least ten males, but I would assume that
21 a school would begin with the size of 50, that's a
22 Yeshiva, while a congregation may begin with the size of
23 12 or 13.

24 JUDGE BENICE: That's all.

25 You are excused.

MR. STRELZIN: You are excused.

DIRECT EXAMINATION OF JACOB BOOKSON

(Witness excused.)

Whereupon,

JACOB BOOKSON

was duly sworn and testified as follows:

THE WITNESS: My name is Jacob Bookson.

Q (By Mr. Strelzin) What is your address?

A 7 Smolley Drive, Monsey, New York.

Q And what is your business, sir?

A I am in the paper business.

Q Where is your place of business located?

A My place of business is located in 4th Street
in Brooklyn.

Q Now, what belief do you have -- are you an Orthodox
Jew, are you an Chassidic Jew?

A I am an Orthodox Jew, sir.

Q And where do you do your praying?

A At Congregation Etz, Chaim in Monsey.

Q And at the present time are you familiar with the
method of travel between Monsey and New York City?

A Yes, sir.

Q Would you describe it for His Honor, please?

A Well, I can't add too much to what the previous
witness has testified --

Q Just describe it to the best of your ability?

A The word that best describes it would be a hassle.

DIRECT EXAMINATION OF JACOB BOOKSON

1 Many go in car pools and, of course, there are
2 various vans that go in from the various congregations,
3 and Mr. Lunger's bus takes a great many from the various
4 congregations.

5 Q Now, you say if Mr. Lunger were approved he would
6 pick up from the various congregations?

7 A That's correct.

8 Q How is it done today?

9 Do the congregations have their own little buses,
10 and is there -- are there car pools?

11 A Yes, sir.

12 Q Is there a need, do you know, for the applicant's
13 service?

14 A There's a great need, sir.

15 Q Now, can you tell me something about the people that
16 live in Monsey?

17 Are they Orthodox people?

18 A Basically they are Orthodox, yes, sir.

19 Q And do they have beliefs and customs of their own?

20 A Yes, sir.

21 Q And is it the purpose of the applicant herein to
22 cater to these customs, to cater to this manner of living,
23 and the -- and to provide the service that is presently
24 being provided by so many different automobiles and
25 car pools?

 A Yes, sir.

DIRECT EXAMINATION OF ABRAHAM JOSEPH

1 Q And buses that hardly meet with the standards
2 required by the state and the ---

3 A Yes.

4 There is a great need for a gentleman of Mr. Lunger's
5 caliber to try and make a cohesive transportation
6 from Monsey.

7 MR. STRELZIN: I have no other questions of this
8 witness, Your Honor.

9 Q (By Judge Benice) Are you in a position to state
10 that your congregation would enter into a contract
11 with the applicant if he received authority?

12 A Yes, sir.

13 Q And you would?

14 A Yes, sir.

15 JUDGE BENICE: That's all I have.

16 MR. STRELZIN: Thank you very much.

17 JUDGE BENICE: Off the record.

18 (Discussion off the record.)

19 JUDGE BENICE: On the record.

20 Whereupon,

21 ABRAHAM JOSEPH

22 was duly sworn and testified as follows:

23 THE WITNESS: My name is Abraham Joseph.

24 My address is 7 Cedar Lane, Monsey, New York.

25 DIRECT EXAMINATION

DIRECT EXAMINATION OF ABRAHAM JOSEPH

1 Q (By Mr. Strelzin) Mr. Joseph, where do you reside,
2 sir?

3 A My home is at 7 Cedar Lane, Monsey, New York.

4 Q How long have you been living there, sir?

5 A I moved out there approximately three years ago.

6 I am a recent comer to Monsey.

7 Q Now, are you a member of any congregation in Monsey?

8 A Yes.

9 Q What's the name of it, please?

10 A I am a member of the Congregation owned by Rabbi
11 Tittlebaum, and --

12 Q Is that --

13 A Three Ralph Boulevard, Monsey, New York.

14 Q Are you an Orthodox Jew?

15 A Yes.

16 And I adhere to all the Sabbath observances, and
17 all the other codes and ethics put forth by the Talmud
18 and the code of laws.

19 Q Congregation Rabbi Tittlebaum, how do they presently --
20 withdrawn.

21 How many members do they have in this congregation,
22 Rabbi Tittlebaum?

23 A We have approximately 35 to 45 members.

24 Q And are some of these members required to perform
25 their trade in the City of New York?

DIRECT EXAMINATION OF ABRAHAM JOSEPH

1 Yes or no, sir?

2 A Yes.

3 Q How do they get presently to the City of New York?

4 A Many of them -- many of -- many have to use their
5 own cars.

6 Many have to go in with hired vans or taxies that
7 they have to find on their own.

8 And occasionally there's a bus that they might be
9 able to get at times, but it's in the very frequent.

10 Q Do you know whether or not this congregation Rabbi
11 Tittlebaum is prepared to utilize the services of Monsey
12 Transportation, the applicant herein, in the event the
13 Interstate Commerce Commission approves his application?

14 A Yes.

15 I am sure that most of the members would enjoy such
16 a service, and that the congregation would support it
17 fully.

18 Q And is there a need for such a service?

19 a There's a definite need.

20 At present if I would have to come in -- I'd
21 have to get a taxi, which is up now to 2.75.

22 I'd have two dollars on a bus fare from the Town
23 of Spring Valley, which is total 4.75 plus 50 cents
24 for subway, which will bring it up to \$5.25 or \$10.50
25 and 50 cents a day, which will take away the major
portion of salary for the week, so I feel that -- and

DIRECT EXAMINATION OF MOSHE WOSNER

1 using my own car is impossible also.

2 Gas cost plus tools and parking just raise it
3 much too high to use your own car.

4 We have to find some cheaper means of getting
5 people directly from Monsey into the city.

6 Q Rather than cheaper, less expensive?

7 A Less expensive.

8 MR. STRELZIN: Thank you very much, Mr. Joseph.

9 (Witness excused.)

10 MR. STRELZIN: Your Honor, may I respectfully
11 request before I call the next witness that in order
12 to avoid cumulative evidence, I'd like the witness
13 to give their name and address, what congregation they
14 are affiliated with, and ask them if they have
15 listened to the questions and answers that have previously
16 been propounded to the witnesses and the answers they
17 received and if they were asked the same questions
18 whether in sum and substance their answers would be
19 the same, with Your Honor's approval.

20 JUDGE BENICE: Very well.

21 MR. STRELZIN: Thank you, sir.

22 Please sit down.

23 Whereupon,

24 MOSHE WOSNER

25 was duly sworn and testified as follows:

DIRECT EXAMINATION OF MOSHE WOSNER

- 1 Q (By Mr. Strelzin) What is your full name, sir?
- 2 A Monshe Wosner.
- 3 My address is 7 Ralph Boulevard, Monsey, New York
- 4 Q Are you an Orthodox Jew, sir?
- 5 A Yes, I am.
- 6 Q Do you reside in Monsey, New York?
- 7 A Yes, I do.
- 8 Q How long have you been living there?
- 9 A 11 years.
- 10 Q Are you connected with any congregation?
- 11 A Yes.
- 12 Q What is the name of the congregation?
- 13 A Hareiden.
- 14 Q How do you spell that?
- 15 A I wish I knew.
- 16 Q H-a-r-e-i-d-e-n.
- 17 And is that Hareiden located in Monsey?
- 18 A Yes, sir.
- 19 Q Now, have you listened to the questions that have
- 20 been propounded to the witnesses this morning?
- 21 A Yes, I did.
- 22 Q And have you been sitting here all morning?
- 23 A Yes, I did.
- 24 Q If you were asked these same questions, would your
- 25 answers in substance be the same?

DIRECT EXAMINATION OF MOSHE WOSNER

1 A Yes, they would.

2 Q Do you believe that there is a need for the
3 applicant's service -- Monsey Transportation?

4 A Yes.

5 There's a great need for that, I know.

6 I lived there for 11 years, and I hustled and
7 hustled a lot of years to come into the city, and
8 to try to get into the city on time in the morning and --

9 Q Would you say that your organization Hareiden would
10 be prepared to enter into a contract with Monsey Trans-
11 portation of it's members and families?

12 A Yes.

13 They have been -- they will be very happy to do
14 that.

15 MR. STRELZIN: Thank you very much, Your Honor.

16 JUDGE BENICE: I have no questions.

17 (Witness excused.)

18 (Judge Benice affirmed next witness.)

19 Q (By Mr. Strelzin) What is your name, please?

20 A Gittie Herskotitz.

21 Q First name is Gittie, G-i-t-t-i-e?

22 A Yes.

23 Q How old are you?

24 A 21.

25 Q And how long have you been living in Monsey?

A 21 years.

DIRECT EXAMINATION OF MOSHE WOSNER

1 Q I assume we will take judicial notice that you
2 were born in Monsey?

3 A I guess the hospital wasn't in Monsey, but I
4 was born there.

5 Q Now, are your parent's Orthodox?

6 A Yes, they are.

7 Q Are you Orthodox?

8 A Yes, I am.

9 Q You follow the dictates and the tenets of the
10 Orthodox religion?

11 A Yes, I do.

12 Q Are you employed anywhere?

13 A Yes, I am.

14 Q Where are you employed, my dear?

15 A You want the name of the company?

16 Q Are you employed in Brooklyn or --

17 A In Manhattan.

18 Q And it is necessary for you to travel everyday
19 from Monsey to Manhattan?

20 A Yes, it is.

21 Q How do you get there presently?

22 How have you been getting there?

23 A Well, spending all the night on phone calls,
24 trying to get in cars and arranging car pools.

25 Once in a while I get in by bus.

DIRECT EXAMINATION OF MOSHE WOSNER

1 All different kind of hard ways.

2 Q Do you believe -- withdrawn.

3 Have you been sitting here all morning?

4 A Yes.

5 Q Have you listened to the testimony of the various
6 witnesses?

7 A Yes, I did.

8 Q Have you heard the testimony of Chaim Lunger, the
9 applicant Monsey Transportation?

10 A Yes.

11 Q Now, is it your opinion that there is a need for
12 the service that the applicant would make available
13 to the residents of Monsey who are members of these
14 religious organizations and Yeshivas?

15 A Yes, I think so.

16 Q Are you a member of any Yeshiva or congregation?

17 A My father is a member.

18 Q What congregation does your father serve in?

19 A I don't know the name of the congregation.

20 I live across the street but -- Rem Jancov
21 Kamenetsey Synagogue.

22 Q Are you an attendant at the Yeshiva or were you an
23 attendant at the Yeshiva?

24 A My father is a daily attendant there, and I go
25 on the High Holy Days.

DIRECT EXAMINATION OF MOSHE WOSNER

1 MR. STRELZIN: I have no further questions.

2 JUDGE BENICE: You are excused.

3 (Witness excused.)

4 (Judge Benice affirmed the next witness.)

5 Q (By Mr. Strelzin) What is your full name, sir?

6 A Yoel Lungner.

7 Q Where do you reside, sir?

8 A 24 Lincoln Avenue, Spring Valley, New York, 10977.

9 Q Are you familiar with the area known as Monsey,
10 New York?

11 A Yes.

12 Q Do you have occasion to visit Monsey, New York?

13 A Yes.

14 Q How often?

15 A Well, every few days.

16 Q Now, do you know whether or not there are religious
17 people living in Monsey?

18 A Yes.

19 Q Are they?

20 A Yes.

21 Q Do you know whether or not there is a need for
22 the service that was testified to by Chaim Lungner?

23 A Yes.

24 Definitely.

25 Q You have heard the questions put to the witnesses

DIRECT EXAMINATION OF MOSHE WOSNER

1 this morning?

2 A Yes.

3 Q And if you were asked those questions would your
4 answers be in substance the same?

5 A The same, yes.

6 Q What is the name of the synagogue that you are
7 affiliated with?

8 A Congregation BneiYokiv.

9 MR. STRELZIN: No other questions.

10 (Witness excused.)

11 JUDGE BENICE: You want to recall the previous
12 witness.

13 Q (By Mr. Strelzin) Mr. Lunger, do you know whether
14 or not your congregation would be prepared to enter into
15 a contract with Monsey Transportation?

16 A Yes.

17 Not only my contract.

18 I work for Yeshiva too, Yeshiva Rabbi Samson.

19 Q You are employed by them.

20 A By them, yes.

21 And we know there's a great need, everyone of
22 them asks me every second, I am a bus driver for seven
23 years, steady everyday, take school children and I know
24 all the parent's try to grab along with us if it's
25 possible, but the school does not permit them.

DIRECT EXAMINATION OF MOSHE WOSNER

1 JUDGE BENICE: Are you saying that Yeshiva would
2 be willing to enter --

3 THE WITNESS: No.

4 The Yeshiva would not be willing because the
5 Yeshiva is not in Monsey located.

6 But the parents are.

7 And so what I am saying for the need.

8 JUDGE BENICE: All right.

9 A The parents, they could grab along but they can't.
10 It's confidential only for school kids.
11 It 's a school bus.

12 Q And you are aware that some of the parents are
13 employed in New York City?

14 A Yes.

15 Q And they would require the service?

16 A I would say 80 percent of them, yes.

17 MR. STRELZIN: Okay.

18 Thank you very much, sir.

19 (Witness excused.)

20 MR. STRELZIN: Your Honor, I have no one else.

21 JUDGE BENICE: All right.

22 Let me just look this over then.

23 You have no more witnesses, then, right?

24 MR. STRELZIN: I have none, Your Honor.

25 JUDGE BENICE: All right.

DIRECT EXAMINATION OF MOSHE WOSNER

1 Is there anything further before the hearing
2 is closed?

3 MR. STRELZIN: No, Your Honor.

4 JUDGE BENICE: All right.

5 The hearing is closed.

6 (Whereupon, the hearing was adjourned at 12:40
7 o'clock P.M.)

EXHIBIT NO. 1 TO THE TRANSCRIPT

4) Lee and Rodney St, Bklyn, NY
v/ 49th St. and 13th Ave " " "

under continuing contract with Jewish
GTO Congregations and Yeshivas; with
transportation restricted to members of said
congregations &
yeshivas.

located in the
described ^{property} area
~~residential~~ area;

EXHIBIT NO. 1 TO THE TRANSCRIPT

INTERSTATE COMMERCE COMMISSION	
Docket No. <u>MC-141113</u>	Exhibit No. <u>1</u>
Witness <u>C. Lurger</u>	
(Complainant's	
(Defendant's	
(Commission's	Date <u>4/20/76</u>
(Respondent's	
(Protestant's	
(Applicant's	
(Intervenor's	Reporter <u>Ballard</u>

EXHIBIT NO. 2 TO THE TRANSCRIPT

CERTIFICATE OF INCORPORATION OF

MONSEY TRANSPORTATION CORP.,

designated as an omnibus corporation, pursuant to Sec. 3, of the Transportation Law

IT IS HEREBY CERTIFIED THAT:

(1) The name of the proposed corporation is

MONSEY TRANSPORTATION CORP.

(2) The purpose or purposes for which this corporation is formed, are as follows, to wit:

To engage, as a contract carrier of passengers by motor vehicle, as defined in Sec. 2, subdiv. 22, Transportation Law, in the transportation by motor vehicle of passengers for compensation, other than in the operation of a bus line, between the City of New York and the Township of Monsey, Rockland County, State of New York, upon the following routes, as nearly as practicable, pursuant to Sec. 3, subdiv. 4, Transportation Corporations Law, and also upon such alterations or extensions of such routes as may be hereafter certified pursuant to Art. 5 of the Transportation Corporations Law:

A. From New York City (Borough of Brooklyn)
to Monsey, New York:

Board passengers at 49th Street and 15th Avenue, then beginning from that point, along 49th Street into Fort Hamilton Parkway, along Fort Hamilton Parkway into MacDonald Avenue, along MacDonald Avenue into Terrace Place, along Terrace Place to 18th Street, along 18th Street into Prospect Expressway, along Prospect Expressway into Gowanus Expressway, along Gowanus Expressway into Brooklyn-Queens Expressway, along Brooklyn-Queens Expressway to Flushing Avenue exit and into Classon Avenue, along Classon Avenue into Kent Avenue, along Kent Avenue into Williamsburg Street East, along Williamsburg Street East into Bedford Avenue, along Bedford Avenue into Taylor Street, along Taylor Street into Lee Avenue, along Lee Avenue to Wilson Street, board passengers at that point, then continue along Lee Avenue into Rodney Street, along Rodney Street into Bedford Avenue, along Bedford Avenue into Taylor Street, along Taylor Street into Roebling Street, along Roebling Street into Division Avenue, along Division Avenue into Havemeyer Street along Havemeyer Street into So. 4th Street, along So. 4th Street onto Williamsburg Bridge, across bridge to exit from bridge leading into Delancey Street, along Delancey Street to Allen Street, board passengers at that point, then proceed along Allen Street which becomes First Avenue, continue along First

EXHIBIT NO. 2 TO THE TRANSCRIPT

Avenue into 49th Street, along 49th Street to Fifth Avenue, board passengers at that point, then continue along 49th Street into Ninth Avenue, along Ninth Avenue into Lincoln Tunnel, through Tunnel into New Jersey Turnpike, along Turnpike into Rte. 80, along Rte. 80 into Rte. 17, along Rte. 17 into Garden State Parkway, along Parkway into New York State Thruway, along Thruway to Nanuet exit and into Pascack Road, along Pascack Road into Pipetown Hill Road, along Pipetown Hill Road into Central Avenue, along Central Avenue into Rte. 59, along Rte. 59 into Monsey Boulevard, along Monsey Boulevard to Maple Avenue, discharge passengers at that point, then continue along Maple Avenue to Main Street, discharge passengers at that point, then continue along Maple Avenue (which becomes West Maple Avenue) to Carlton Road, discharge passengers at that point, then proceed along Carlton Road to Blauvelt Road, discharge passengers at that point, then proceed along Blauvelt Road to Cedar Lane and discharge all passengers at that point, being the terminus of the route.

B. From Monsey, New York to New York City (Borough of Brooklyn):

Board passengers at Cedar Lane and Rte. 306, then beginning from that point, along Cedar Lane into Blauvelt Road, along Blauvelt Road to Carlton Road, board passengers at that point, then proceed along Carlton Road to West Maple Avenue, board passengers at that point, then proceed along West Maple Avenue to Highview Road, board passengers at that point, then proceed along Maple Avenue to Main Street, board passengers at that point, then continue along Maple Avenue to Monsey Boulevard, board passengers at that point, then proceed along Monsey Boulevard into Pipetown Hill Road, along Pipetown Hill Road onto Rte. 59, along Rte. 59 into New York State Thruway, along Thruway into Garden State Parkway, along Parkway to Exit 163 and into Rte. 17, along Rte. 17 into Rte. 80, along Rte. 80 into New Jersey Turnpike, along Turnpike into Lincoln Tunnel, through Tunnel to exit leading into Tenth Avenue, along Tenth Avenue into 50th Street, along 50th Street to Sixth Avenue, discharge passengers at that point, then proceed along 50th Street to Lexington Avenue, discharge passengers at that point, then proceed along Lexington Avenue to 41st Street, discharge passengers at that point, then continue along Lexington Avenue to 29th Street, discharge passengers at that point, then proceed along 29th Street to Broadway, discharge passengers at that point, then proceed along Broadway to Houston Street, discharge passengers at that point, then proceed along Houston Street into Allen Street, along Allen Street to Delancey Street, discharge passengers at that point, then proceed along Delancey Street onto Williamsburg Bridge, across Bridge to exit leading into Roebling Street, along Roebling Street into Division Avenue, along Division Avenue into Wilson Street, along Wilson Street to Lee Avenue, discharge passengers at that point, then

EXHIBIT NO. 2 TO THE TRANSCRIPT

proceed along Lee Avenue into Williamsburg Street West, along Williamsburg Street West onto Brooklyn-Queens Expressway, along Expressway into Gowanus Expressway, along Gowanus Expressway into Prospect Expressway, along Prospect Expressway into Tenth Avenue, along Tenth Avenue to MacDonald Avenue, along MacDonald Avenue into Fort Hamilton Parkway, along Fort Hamilton Parkway into 50th Street, along 50th Street to 15th Avenue and discharge all passengers at that point, being the terminus of the route.

C. From New York City (Borough of Manhattan)
to Monsey, New York:

Board passengers at 187th Street and Amsterdam Avenue, then beginning from that point, along Amsterdam Avenue to George Washington Bridge, across that bridge into Rte. 4, then along Rte. 4 into Rte. 17, then along Rte. 17 into Garden State Parkway, then along that parkway to Exit 172 into Pipetown Hill Road and along Pipetown Hill Road into Rte. 45, then along Rte. 45 onto Old Nyack Turnpike, and along Old Nyack Turnpike to Kennedy Drive, discharge passengers at that point, then proceed along Kennedy Drive onto Rte. 59, along Rte. 59 into Monsey Boulevard, along Monsey Boulevard to Maple Avenue, discharge passengers at that point, then proceed along Maple Avenue (which becomes West Maple Avenue) into Boxwood Lane, along Boxwood Lane to Remsen Avenue, discharge passengers at that point, then proceed along Remsen Avenue into Barbara Lane, along Barbara Lane to College Road, board passengers at that point and proceed along College Road into Highview Avenue, along Highview Avenue into Windover Lane, along Windover Lane to Carlton Road, board passengers at that point, then proceed along Carlton Road into Blauvelt Road, along Blauvelt Road into Cedar Lane, along Cedar Lane to corner of Cedar Lane and Blauvelt Road and discharge all passengers at that point, being the terminus of the route.

D. From Monsey, New York to New York
City (Borough of Manhattan):

Board passengers at corner of Cedar Lane and Blauvelt Road, then beginning from that point, along Blauvelt Road into Carlton Road, along Carlton Road to Windover Lane, board passengers at that point, then proceed along Windover Lane into Highview Road, along Highview Road to College Road, board passengers at that point, then proceed along College Road to Barbara Lane, board passengers at that point, then proceed along Barbara Lane to Remsen Avenue, board passengers at that point, then proceed along Remsen Avenue into Mountain Avenue, along Mountain Avenue to Maple Avenue, board passengers at that point, then proceed along Maple Avenue into Monsey Boulevard, along Monsey Boulevard into Rte. 59, along Rte. 59 into Kennedy Drive, along Kennedy Drive to Old Nyack Turnpike, board passengers at that point, then proceed along Old Nyack Turnpike into Rte. 45, along Rte. 45 into Garden State Parkway, along Garden State Parkway to Exit 163 and

EXHIBIT NO. 2 TO THE TRANSCRIPT

into Rte. 17, along Rte. 17 into Rte. 4, along Rte. 4 onto George Washington Bridge, across bridge to exit from bridge leading into Amsterdam Avenue, along Amsterdam Avenue to 187th Street and discharge passengers at that point, being the terminus of the route.

The corporation, in furtherance of its corporate purposes above set forth, shall have all of the powers enumerated in the Transportation Corporations Law, The Transportation Law, and the Business Corporation Law, subject to any limitations provided in the said laws or in any other statute of the State of New York

(3) The office of the corporation is to be located in the Town of Spring Valley, County of Rockland, State of New York.

(4) The aggregate number of shares which the corporation shall have the authority to issue is 200 shares common, all of which shall be without par value.

(5) The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is

94 Washington Avenue
New Square
Spring Valley, New York 10977

The undersigned incorporator, or each of them if there are more than one, is of the age of twenty-one years or over.

IN WITNESS WHEREOF, this certificate has been subscribed this 4 day of Feb 1975 by the undersigned who affirm that the statements made herein are true under the penalties of perjury.

CHAIM LUNGER

S/Chaim LUNGER

94 Washington Avenue,
New Square, Spring Valley, N.Y. 10977

FEIGE LUNGER

S/Feige LUNGER

94 Washington Avenue
New Square, Spring Valley, N.Y. 10977

EXHIBIT NO. 3 TO THE TRANSCRIPT

Ex. 3

GERALD S. EISENBERGER

Certified Public Accountant

40 BRIARCLIFF DRIVE

Monsey, N.Y. 10952

Tel. 914-356-7376

May 20, 1975

Monsey Transportation Corp.
94 Washington Ave.
Spring Valley, N.Y. 10977

Gentlemen;

Below please find Balance Sheet of Monsey Transportation Corp.
as at May 20, 1975. All figures contained therein are as submitted
by your management, without verification by direct communication
with outside sources.

I therefore can not render an opinion on this Balance Sheet.

Yours truly;

Gerald S. Eisenberger
Gerald S. Eisenberger

Balance Sheet as at May 20, 1975

UNAUDITED

ASSETS

Cash in Nanuet National Bank

\$ 10,000

Buses (8) at estimated value

1958 GMC 45 Passenger @ 8,000

1958 GMC 45 Passenger @ 8,000

1958 GMC 51 Passenger @12,000

1958 GMC 51 Passenger @12,000

1960 GMC 53 Passenger @20,000

1957 GMC 45 Passenger @ 7,000

1955 GMC 45 Passenger @ 6,000

1953 GMC 45 Passenger @ 5,000

Total Buses

\$ 78,000

TOTAL ASSETS

\$ 88,000

LIABILITIES AND CAPITAL

LIABILITIES

Loans Payable to Stockholders

\$ 48,000

TOTAL STOCK

\$ 40,000

TOTAL LIABILITIES AND CAPITAL

\$ 88,000

EXHIBIT NO. 3 TO THE TRANSCRIPT

INTERSTATE COMMERCE COMMISSION	
Docket No. <u>MP 14113</u>	Exhibit No. <u>3</u>
Witness <u>R. Greenwald</u>	
(Complainant's	
(Defendant's	
(Commission's	Date <u>4/20/76</u>
(Respondent's	
(Protestant's	
(Applicant's	
(Intervenor's	Reporter <u>Ballard</u>

United States Court of Appeals
for the Second Circuit

Hudson Transit Lines, Inc.,
Petitioner,

against

United States of America, The Interstate Commerce
Commission and Monsey Transportation Corp.,
Respondents.

**AFFIDAVIT
OF SERVICE
BY MAIL**

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Frank Di Benedetto, being duly sworn, deposes and says that he
is over the age of 18 years, is not a party to the action, and resides
at 40 Bay 37th Street, Brooklyn, New York
That on March 22, 1977, he served 2 copies of Brief
and 1 copy of Appendix
on

Craig Lawrence, Esq., Harvey Strelzun, Esq.,
Asst General Counsel, 253 Broadway,
Interstate Commerce Commission, New York, New York, 10007.
Room 5137
Washington, D. C., 20523

Harry Grossman,
Chief Appellate Section,
Anti Trust Division,
Department of Justice,
Washington, D. C., 20423.

by depositing the same, properly enclosed in a securely-sealed,
post-paid wrapper, in a Branch Post Office regularly maintained by
the United States Government at 350 Canal Street, Borough of Manhattan,
City of New York, addressed as above shown.

Frank Di Benedetto
.....

Sworn to before me this
22nd day of March, 1977

John V. DePinto
JOHN V. DEPINTO
Notary Public for New York
City, New York
Commission Expires March 1, 1977